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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052621
Party	Plaintiff N.V. Sumatra Tobacco Trading Company
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

N.V. SUMATRA TOBACCO TRADING CO.	:	
	:	
Petitioner,	:	Cancellation No. 92052621 (Consolidated)
	:	
v.	:	Reg. No. 2,972,524
	:	
AMERICAN CIGARETTE COMPANY INC.,	:	
	:	
Respondent.	:	

**MOTION AND MEMORANDUM OF LAW IN SUPPORT OF  
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, petitioner N.V. Sumatra Tobacco Trading Co. ("Petitioner", "Applicant" or "N.V. Sumatra") respectfully moves for summary judgment on its Petition to Cancel Registration No. 2,972,524 for UNION in the name of American Cigarette Company Inc. ("Respondent", "Opposer" or "ACC") and submits this memorandum of law in support thereof.

**BACKGROUND/STANDING**

Respondent filed oppositions to the registration of Petitioner's applications for UNION GOLD (App. No. 76/415,303) and UNION and Design (App. No. 76/415,305) on July 17, 2008 and October 7, 2008, respectfully. The oppositions, which were consolidated on November 4, 2008, were based on a likelihood of confusion with the UNION mark which is the subject of Respondent's prior Registration No. 2,972,524. Petitioner's applications for UNION and UNION GOLD cover "cigarettes, kretek cigarettes, cigars, virginia tobacco, shag tobacco, cut of cloves for smoking, cigarette papers, cigarette lighters not of precious metal and matches." Respondent's registration for UNION covers "cigarettes."

In light of certain information and documentary materials obtained during the discovery period of the consolidated opposition proceedings, Petitioner filed a Petition to Cancel Registration No. 2,972,524

on June 24, 2010. The consolidated opposition proceedings and cancellation proceeding were further consolidated on August 12, 2010. The Petition to Cancel is based on the Respondent's lack of bona fide use of the UNION mark in the ordinary course of business prior to the statutorily mandated February 19, 2005 Statement of Use deadline. As demonstrated below, Respondent has failed to produce any concrete evidence of the manufacture, sale or distribution of UNION branded cigarettes by the mandated use deadline. Further, even if Respondent were viewed to have established a genuine issue of fact that UNION branded cigarettes were manufactured, sold and/or distributed prior to the mandatory use deadline, Respondent's alleged use does not qualify as use in the ordinary course of trade required under law.

As the parties have now engaged in nearly three (3) years of discovery and Respondent has informed that it has no more unproduced documents relevant to these proceedings, Petitioner respectfully moves this Board to cancel the UNION Reg. No. 2,972,524 (thereby mooted the opposition proceedings) and instruct that Petitioner's applications be allowed.

#### **STANDARD**

Summary judgment is appropriate when the record, viewed in light most favorable to the non-moving party, shows there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). To prevail on the motion, the moving party must show "an absence of evidence to support the non-moving party's case" considering the pleadings, depositions, answers to interrogatories, admissions, and affidavits. *Celotex* at 326. Thus, N.V. Sumatra, as the moving party, bears the initial burden to "point out . . . that there is an absence of evidence supporting the nonmoving party's case." *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1563, 4 U.S.P.Q.2d 1793 (Fed. Cir. 1987); *see also Kellogg Co. v. Pack'Em Enters. Inc.*, 951 F.2d 330, 333, 21 U.S.P.Q.2d 1142, 1145 (Fed. Cir. 1991). Once shown, the burden then shifts to the nonmoving party, ACC, to "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56(e)).

To meet its burden, however, ACC may not simply present a self-serving affidavit, attesting to conclusory statements of “fact.” *Quest Capital Management, Inc. v. Nat’l Home Buyers Assistance, L.L.P.*, Cancellation No. 92043995, 9 n.9 (T.T.A.B. Mar. 23, 2006) (finding that a self-serving affidavit “unsupported by documentary evidence” should be afforded only a “minimal probative value” on a motion for summary judgment); *see also Nintendo of Am. Inc. v. Adar Golad*, Opp. No. 91178130, 25 (T.T.A.B. Feb. 16, 2011) (“Applicant’s mere self-serving assertion that he had a bona fide intent to use the mark in connection with the identified goods in the U.S. was held insufficient to establish a genuine issue of material fact since he produced no documents to support the assertion.”) (citing *Honda Motor Co., Ltd. v. Friedrich Winkelmann*, 90 U.S.P.Q.2d 1660 (T.T.A.B. 2009)). Instead, to prevail on a motion for summary judgment, Rule 56(e) “requires the nonmoving party to go beyond the pleadings” to present “concrete evidence” supporting its position. *Celotex*, 477 U.S. at 324.

#### **STATEMENT OF UNDISPUTED FACTS**

1. At all times relevant to these actions which gave rise to these proceedings, Basil Battah was the principal of Mary Jane Cigarette Co., Inc. (“MJC”), United American Tobacco (“UAT”), American Cigarette Company (“ACC”) and American Automotive Security Products, Inc. dba F.T.S. Distributors C.D.A. (“FTS”). Ex. 1, Resp’t Reply to Pet’r Interrog. Req. No. 3; Ex. 2, Opposer’s Reply to First Req. for Admis. Nos. 27, 29-34, 40-43.

2. ACC’s predecessor, MJC, was the East Coast Distributor for Petitioner’s UNITED brand of cigarettes at least as early as May 2001. Ex. 3, Opposer’s Reply to Applicant’s First Interrog. Req. No. 3.

3. During the term of the relationship with MJC, Petitioner was the owner of an Indonesian registration for UNION GOLD for cigarettes and had been offering UNION branded cigarettes in Indonesia since the 1950s and in other international marketplaces well prior to 2001. Ex. 4, Indonesian Registration Certificate for UNION GOLD.



4. The relationship between MJC and Petitioner ended after a short period of time and MJC decided to pursue manufacturing and distribution on its own. Ex. 3, Opposer's Reply to Applicant's First Interrog. Req. No. 3.

5. MJC filed an application with the United States Patent and Trademark Office on June 1, 2001 for registration of the mark UNION for cigarettes (App. No. 78/066,805). MJC's UNION application was based on a bona fide intention to use the mark in commerce. Ex. 5, App. No. 78/066,805.

6. Petitioner filed applications for UNION GOLD (App. No. 76/415,303) and UNION and Design (App. No. 76/415,305) on June 7, 2002 both for "cigarettes, kretek cigarettes, cigars, Virginia tobacco, shag tobacco, cut of cloves for smoking, cigarettes papers, cigarette lighters not of precious metal and matches." *See* Ex. 6, App. No. 76/415,303; Ex. 7, App. No. 76/415,305.

7. Petitioner's UNION GOLD application was filed based on a bona fide intention to use the mark in commerce and on the basis of a renewed Indonesian registration for UNION GOLD which registered on May 1, 1994 (Reg. No. 320784). *See* Ex. 6.

8. Petitioner's UNION and Design application was filed based on a bona fide intention to use the mark in commerce and on the basis of a prior Indonesian application for UNION & Design which was filed on May 16, 2002 (App No. D00-02-09771). *See* Ex. 7.

9. MJC filed a Statement of Use for UNION on February 7, 2005 in App. No. 78/066,805 ("the SOU" or "Respondent's SOU"). Ex. 8, SOU & Specimen.

10. The fifth and final extension of time for filing a SOU for App. No. 78/066,805 would have expired on February 19, 2005. Ex. 9, Notice of Allowance; Ex. 12, Opposer's Supp. Reply to Applicant's First Req. for Admis. No. 15.

11. MJC's App. No. 78/066,805 would have abandoned if the SOU was not filed on or before February 19, 2005. Ex. 12, No. 16.

12. The specimen accompanying the SOU of February 7, 2005 in App. No. 78/066,805 was a cigarette pack layout. Ex. 8.

13. The only cigarettes that Respondent identified during discovery as having been manufactured in connection with the UNION brand prior to February 7, 2005 were “few hundred cartons of UNION branded cigarettes” produced by Falcon of America LLC in the end of 2004. Ex. 10, Opposer’s Supp. Reply to Applicant’s Interrog. Req. No. 5; Ex. 11, Opposer’s Supp. Reply to Applicant’s Third Interrog. Req. Nos. 23, 24; Ex. 12, Nos. 17 and 18.

14. In connection with this allegation of manufacture, Respondent produced Falcon’s Sales Prices and Conditions for U.S.A. dated July 12, 2004 (see Ex. 13), a negotiated Letter of Intent between FTS Distributors and Falcon of American LLC (“Falcon”) dated August 12, 2004 (see Ex. 14) and an Agreement between United American Tobacco (“UAT”) and Falcon (with Annex 3 “Product Specification” not included) effective October 5, 2004 (hereafter “the Falcon Agreement”). (see Ex. 15).

15. Falcon never manufactured any cigarettes under the UNION brand. Ex. 16, Aff. of Osmar J. Souza Filho.

16. Falcon never manufactured, distributed or delivered any cigarettes to any party in 2004 or 2005. *See id.*

17. Other than the incomplete Falcon Agreement, Respondent has produced no documents reflecting the actual manufacture of UNION brand cigarettes by Falcon. *See* Ex. 17, Resp’t Reply to Pet’r First Req. for Produc. of Docs. Nos. 3-5; *see also* Ex. 18, Opposer’s Reply to Applicant’s Fourth Req. for Produc. of Docs. Nos. 64-71.

18. Respondent has produced no documents reflecting the actual manufacture of UNION brand cigarettes in the first calendar quarter of 2004 or the first quarter of 2005 by any party. Exs. 17-18.

19. Sales records for UNION cigarettes produced by Respondent show no breakdown of sales of UNION cigarettes in the First Quarter of 2005. Ex. 19, Sales by Item Summary for 1/06 thru 9/08; Ex. 20, Sales by Item Summary 1/05 thru 4/09; Ex. 21, Opposer’s Reply to Applicant’s First Req. for Produc. of Docs. No. 12.

20. Respondent admits it made no shipments or sales of cigarettes under the UNION mark in commerce prior to February 3, 2005. Ex. 12, No. 18.

21. Respondent produced no evidence of purchase orders, invoices or bills of lading for any finalized labels and coating for the UNION brand cigarettes during the 2004-2005 time period. Ex. 22, Resp't Reply to Pet'r First Req. for Produc. of Docs. Nos. 6-8.

22. Respondent document #ACC000068 is an invoice, dated 2-3-2005 (hereafter "Invoice #35"). Ex. 23, Doc. No. ACC000068.

23. Invoice #35 relates to [REDACTED]

[REDACTED] Ex. 2, Nos. 34-37; Ex. 23.

24. Other than Invoice #35 and alleged "customer lists", Respondent has produced no other documentation reflecting the sale or shipment of any UNION cigarettes by Respondent (or its predecessors or affiliates) prior to February 19, 2005. *See* Ex. 12, Nos. 17-19; Ex. 24, Opposer's Reply to Applicant's Third Req. for Produc. of Docs. Nos. 44-47, 51; Ex. 25, Opposer's Reply to Applicant's Third Req. for Produc. of Docs. Nos. 52-59.

25. Invoice #35 nowhere identifies the carton of cigarettes sent to F.T.S Distributors California as a "sample." Ex. 23.

26. Invoice #35 identified the cost of the carton of UNION brand cigarettes to F.T.S. Distributors California as [REDACTED] Ex. 26, Resp't Reply to Pet'r Interrog. Req. No. 5.

27. Respondent acknowledges that the [REDACTED] amount reflected on Invoice #35 was the full cost paid by F.T.S. Distributors California for the carton of UNION brand cigarettes. *See id.*

28. Respondent represents that the [REDACTED] reflected on Invoice #35 covered the cost of manufacturing of the cigarettes, tax and freight to ship the carton of cigarettes. *See id.*

29. The carton of UNION brand cigarettes identified by Invoice #35 was allegedly sent by [REDACTED] by overnight Federal Express. Ex. 27, Opposer's Supp. Reply to Applicant's Second Interrog. Req. Nos. 19-20.

30. Other than Invoice #35, Respondent has produced no documentation supporting the alleged Federal Express shipment. Ex. 28, Opposer's Reply to Applicant's Second Req. for Produc. of Docs. Nos. 30-32, 41; Ex. 29, Opposer's Reply to Applicant's Third Req. for Produc. of Docs. Nos. 60, 61.

31. In 2005, the Federal Excise Tax was 39 cents per pack of cigarettes, or \$3.90 per carton. 26 U.S.C. § 5701(b), attached hereto as Ex. 30;<sup>1</sup> 27 C.F.R. § 40.23 (2004), attached hereto as Ex. 31.

32. The Sales Price and Conditions for U.S.A. dated July 12, 2004 and generated by Falcon identified the invoice cost of a carton of cigarettes (without shipping costs) at [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Ex. 13.

33. Respondent's documents reflecting the distribution of sample cigarettes to customers in August 2005 [REDACTED]  
[REDACTED] Ex. 32, Doc. No. ACC-000775-783.

34. Respondent's documents reflecting the distribution of sample cigarettes to customers in September and October 2005 demonstrate [REDACTED]  
[REDACTED]  
[REDACTED] Ex. 33, Doc. No. ACC-000784-806.

35. Cigarette packaging must have health warning labels. Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331(a)(1) (2000), attached hereto as Ex. 34.

<sup>1</sup> Exhibits 30, 31, 39, 42, 43, and 46 contain current versions of the cited statutes and regulations. These citations have been cross-referenced with corresponding citations from 2004 and 2005 and found to be the same. See Ex. 45, Second Affidavit of T. DeMarco ¶¶ 6-8.

36. The Cigarette Labeling and Advertising Act ("CLAA") requires any person who manufactures, packages, or imports cigarettes to submit annually to the FTC a planned rotational schedule of warning labels to be applied to its cigarette packs and packaging. 15 U.S.C. § 1333(c), attached hereto as Ex. 34.

37. Under the CLAA, a cigarette manufacturer or importer may not lawfully sell or advertise cigarettes or distribute sample cigarettes until the FTC has reviewed and authorized the planned rotational schedule. 15 U.S.C. §§ 1332, 1333(a), 1333(c), attached hereto as Ex. 34.

38. Respondent has produced no documents relating to the FTC approval of a rotational warning label schedule for UNION branded cigarettes for 2004. Ex. 35, Resp't Reply to Pet'r Interrog. Req. No. 4.

39. Respondent has produced no documents relating to the FTC approval of a rotational warning label schedule for the UNION branded cigarettes for the first quarter of 2005. Ex. 35.

40. The FTC maintains as part of its public records the FTC approved cigarette health warning label plans submitted for particular brands/manufacturers. Ex. 36, Aff. of T. DeMarco.

41. As of March 4, 2011, the FTC maintained public record binders of submitted and authorized cigarette health warning label plans, including for the time period from November 28, 2003 to April 27, 2006. *See id.*

42. The FTC public record binders of submitted and approved cigarette health warning label plans for the time period from November 26, 2003 to April 27, 2006 do not reflect any submission for the UNION branded cigarettes of Respondent in this time frame. *Id.*

43. The Alcohol and Tobacco Tax and Trade Bureau's ("TTB") regulations regarding taxation of tobacco products require every domestically produced package of tobacco products to include either the name and place of business (including city and state) of the manufacturer or the manufacturer's TTB permit number. 27 C.F.R. § 40.212 (2004), attached hereto as Ex. 37. Production of samples is not among the itemized list of uses exempted from such taxation requirements. *See id.* § 40.232 ("uses of

tobacco products . . . for advertising or consumer testing or as . . . samples are not” uses excluded from taxation).

44. The SOU represented that the cigarette pack layout attached as a specimen, Ex. 8, showed the mark as used in commerce.

45. The cigarette pack packaging specimen submitted by MJC with the SOU does not reflect the name and place of business of the manufacturer, packer, distributor or the manufacturer’s TTB number, as required by TTB regulations. *See* Ex. 8.

46. The cigarette pack packaging specimen submitted by MJC with the SOU was identical to the cigarette pack packaging for the packages contained within the carton referred to in Invoice #35, ACC-000068. Ex. 38, Opposer’s Reply to Applicant’s First Req. for Admis. No. 10.

47. The cigarette pack packaging specimen submitted by MJC with the SOU was a photocopy of the cigarette pack packaging for the packages of cigarettes contained within the carton referred to in Invoice #35. Ex. 38, No. 11.

48. The cigarette pack packaging specimen submitted by MJC with the SOU did not specify conspicuously the name of the manufacturer, packer or distributor. *Id.*

49. Respondent has produced no document in support of its denial that the sale of the carton or of any pack within the carton referred to in Invoice #35 did not specify conspicuously the name and place of business (including city and state) of the manufacturer or the manufacturer’s TTB permit number. Ex. 17, Nos. 1-2.

50. Respondent has produced no documents in support of its position that the sale of the carton or of any pack within the carton referred to in Invoice #35 was in regulatory compliance. Ex. 35 No. 4; Ex. 17, Nos. 1-2; Ex. 38, No. 12; Ex. 39 Resp’t Reply to Pet’r First Req. for Interrogs. No. 8.

51. Beginning June 30, 2004, only cigarette brands and roll-your-own products listed in the Attorney General's California Tobacco Directory are permitted to be sold, offered for sale or possessed for sale in the state or shipped or otherwise distributed into the state. CAL. REV. & TAX. CODE §

30165.1(e)(2) (2004), attached hereto as Ex. 40. To enter brands into the California Tobacco Directory, tobacco manufacturers must file certification and other required forms. *Id.* § 30165.1(b) The May 6, 2005 "Directory of Compliant Cigarettes and Roll Your Own Brand Families" (the "Tobacco Directory") does not identify Falcon, FTS Distributors California, MJC or ACC as an approved manufacturer of cigarettes nor does not the Tobacco Directory identify UNION as a brand family in compliance with California law. Ex. 41, May 6, 2005 California Tobacco Directory.

52. For all periods of time relevant to this Motion the States of California and Florida have required manufacturers or distributors of cigarettes to obtain stamps to be affixed upon the individual cigarette packs as evidence of payment of the state excise tax. FLA. STAT. §§ 210.06 (2005), attached hereto as Ex. 42; CAL. REV. & TAX. CODE § 30163 (2004), attached hereto as Ex. 40.

53. The applicable Florida statute provides that "The [Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation] may authorize any person to give away sample packages of cigarettes, each to contain not less than two cigarettes upon which the taxes have been paid." FLA. STAT. § 210.04(6), attached hereto as Ex. 42.

54. The Falcon Agreement [REDACTED]

[REDACTED] Ex. 15 ¶ 9.2.

55. The State of Florida has informed that it has no records supporting the payment of taxes for any sale or distribution of cigarettes by MJC, ACC, FTS Distributors, Falcon, or United American Tobacco. Ex. 43, Second Aff. of T. DeMarco.

56. The California Code of Regulations permits the distribution of untaxed samples/cigarettes. CAL. CODE REGS. tit. 18 § 4081, attached hereto as Ex. 44. However, the manufacturer giving away such sample cigarettes or tobacco products must report the distribution on its monthly report or return and pay the tax due. *Id.* Each package of such samples shall have imprinted on it: "Not for Sale. Applicable state tax has been paid" and each package of sample tobacco products shall be clearly marked as a sample. *Id.*

57. Respondent has produced no documents relating to any payment of taxes in California and/or the Division's approval of the distribution of sample UNION branded cigarettes for the first quarter of 2005.

58. The cigarette pack packaging specimen submitted by MJC with the SOU which was identical to the cigarette pack packaging for the packages contained within the carton referred to in Invoice #35, does not contain the word "sample" as required by the California Statute Title 18 Regulation 4081. Ex. 8.

59. American Automotive Security Products Inc. (dba FTS Distributors C.D.A.) and FTS Distributors of California were named as counter-defendants in an unrelated New Mexico lawsuit. Both companies were found guilty of conspiring with each other to manufacture non-existent agreements so they could assert baseless claims and "offsets" against the defendant/counterplaintiff. Ex. 45, *Sandia Tobacco Mfgs., Inc. v. F.T.S. Distributors California, Inc., et al.*, No. 2:06-cv-00704 (D.N.M.).

60. On May 15, 2007 MJC filed an assignment of Reg. No. 2,972,594 to ACC. Ex. 46.

61. ACC filed Opposition No. 91185261 to Applicant's Serial No. 76/415,303 for UNION GOLD on July 17, 2008 (see Ex. 47) and filed Opp. No. 91186841 to Applicant's Serial No. 76/415305 for UNION & Design on October 7, 2008 (see Ex. 48).

62. As of at least as early as July 17, 2008, Respondent was obligated to preserve any documents potentially relevant to the marks at issue.

63. Respondent claims to have a document destruction policy that calls for documents over five years old to be destroyed. Ex. 49, Resp't Reply to Pet'r First Req. for Doc. Produc. Nos. 9-14.

64. Respondent's document destruction policy should have been suspended at least as early as July 17, 2008 in regard to documents potentially relevant to the marks at issue.

65. Documents from July 17, 2003 or later that were potentially relevant to the marks at issue should have been preserved by Respondent.



66. Respondent's counsel informed Petitioner's counsel in a September 1, 2011 telephone discussion that his client had given Petitioner "everything it had" and that his client possessed "no more documents relevant to the dispute." Ex. 50, Aff. of T. Vold.

### **ARGUMENT**

#### **I. Respondent has Produced No Concrete Evidence of the Manufacture, Sale or Distribution of any UNION Cigarettes Prior to the SOU Deadline**

##### **A. Respondent's Assertions of Use**

Respondent filed the SOU in connection with Registration No. 2,972,524 (then App. No. 78/066,805) for UNION on February 7, 2005 (as previously defined "the SOU" or "Respondent's SOU") – twelve days in advance of the statutorily mandated deadline for submission. *See* Ex. 8. In the SOU, Respondent attested that "the mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 02/04/2005, and first used in commerce at least as early as 02/04/2005, and is now in use in such commerce." The specimen accompanying the SOU was a cigarette pack layout. *See* Ex. 8.

During discovery, Respondent produced an invoice dated 2-3-2005 (hereafter "Invoice #35"). *See* Ex. 23. Respondent represents this Invoice #35 relates to [REDACTED]

[REDACTED] Other than Invoice #35, Respondent has produced no other documentation reflecting the sale or shipment of any UNION cigarettes by Respondent (or any of its predecessors or affiliates) prior to February 19, 2005.

Respondent offered the following discovery responses in support of the alleged manufacture and distribution of UNION marked cigarettes prior to the February 19, 2005 use deadline:

##### **INTERROGATORY NO. 5**

Identify with particularity when Oppose made first use of the mark UNION in the United States and describe the circumstances of that first use in the United States:

**Response:** In late 1999, Respondent's predecessor in-interest Mary Jane Cigarettes Co., Inc. was formed. MJC contracted with a third party manufacturer, "Prime Movers" to make the first run of the UNION branded cigarettes in 2003. That contract was not completed and MJC found a new manufacturer, Falcon of America LLC, to make the first commercial production run of the

UNION branded cigarettes. Falcon produced a few hundred cartons of UNION branded cigarettes sometime near the end of 2004. On February 3, 2005 MJC delivered to F.T.S. Distributors C.D.A. one of its cigarette distributors, UNION branded cigarettes. ACC was created on or about November 9, 2004. In 2005, ACC and MJC decided that ACC would take over the UNION brand and manufacture and sell the UNION cigarettes. ACC Exh. 023, 024. [.....]

**Supplemental Response:** With respect to the few hundred cartons of UNION branded cigarettes manufactured by Falcon, MJC shipped many cartons of UNION cigarettes to distributors and retailers in and out of the State of Florida, including shipment to FTS Distributors CDA on February 3, 2005, who shipped UNION cigarettes to F.T.S> [sic] Distributors California. See ACC-000068. These early shipments to distributors is a regular and customary practice of MJC and now ACC when it begins selling a new brand of cigarettes.

Ex. 10.

#### **INTERROGATORY NO. 23**

Identify each and every retailer and/or distributor to whom Opposer sent a sample shipment of UNION cigarettes prior to February 4, 2005, including the method of delivery and the individual responsible for delivery:

**Response:** When Opposer received samples of Union cigarettes manufactured by Falcon, they were received with all taxes paid, Opposer and Opposer's staff proceeded to send them to any and all potential customers in the US and beyond. Many customers picked up their orders and or ordered on a daily basis. Samples often accompanied these orders. Opposer was not required to account for these samples and therefore did not. Currently Opposer does account for samples as the manufacturer as per request from the TTB in 2007. Otherwise please see documents attached to the responses for the Third Request for the lists requested

This answer supplements the answers to interrogatory Nos. 5, 19 and 20.

#### **INTERROGATORY NO. 24**

Identify each and every retailer and/or distributor to whom Opposer sent a sample shipment of UNION cigarettes during the February 4, 2005 to August 23, 2005 time period, including the method of delivery and the individual responsible for the delivery.

**Response:** When Opposer received samples of Union Cigarettes that were manufactured by Falcon, they were received with all taxes paid, Opposer and Opposer's staff proceeded to send them to any and all potential and ongoing customers in the US and beyond. Many customers picked up their orders and or ordered on a daily basis. Samples often accompanied these orders. Opposer was not required to account for these samples and therefore did not. Currently Opposer does account for samples as the manufacturer as per request from the TTB in 2007. Otherwise please see documents attached to the responses for Third Request for Production for the lists requested. This answer supplements the answers to Interrogatory Nos. 5, 19, and 20.

Ex. 11.

**REQUEST FOR ADMISSION NO. 17**

The shipment of the carton referred to in Opposer's Invoice #35 ACC-000069 was the basis for the SOU filed by Opposer in App. No. 78/066,805 on February 7, 2005.

**Response:** Denied

**Supplemental Response:** Denied, ACC sent out many samples for sale to commercially promote the UNION cigarette brand at the time which included Invoice # 35.

**REQUEST FOR ADMISSION NO. 18**

Opposer had made no other shipment or sale of cigarettes under the UNION trademark in commerce prior to February 3, 2005.

**Response:** Admitted

Ex. 12.

Respondent has not identified any UNION branded cigarettes manufactured prior to February 19, 2005 other than the alleged "few hundred cartons of UNION branded cigarettes" produced by Falcon of America LLC. Ex. 10, No. 5. In connection with this allegation of manufacture, Respondent produced Falcon's Sales Prices and Conditions for U.S.A. dated July 12, 2004, the negotiated Letter of Intent between FTS Distributors and Falcon of American LLC ("Falcon") dated August 12, 2004 and the Falcon Agreement (with Annex 3 "Product Specification" not included) effective October 5, 2004. See Exs. 13-15.

Respondent has produced no other information or documents related to the use of the UNION mark on cigarettes prior to February 19, 2005. In fact, on September 1, 2011, Respondent's counsel informed Petitioner's counsel during a telephone conversation that his client had given Petitioner "everything it had" and that his client possessed "no more documents relevant to the dispute." Ex. 50.

**B. Respondent Has Produced No Concrete Evidence that UNION Cigarettes Were Manufactured before the SOU Deadline**

Respondent has produced no documents to support the actual manufacture of UNION cigarettes prior to February 19, 2005. Specifically, Respondent has produced no communications between Falcon and Respondent (or any of its affiliated entities) following the execution of the Falcon Agreement -- no

product specifications, no purchase orders, no invoices, no evidences of payment, and no bills of lading. *See* Ex. 17, Nos. 3-5; Ex. 18, Nos. 64-71.

More significantly, Osmar Filho Souza, the Managing Member of Falcon from the company's formation on May 6, 2003, has attested unambiguously that Falcon never manufactured any UNION cigarettes, or any other cigarettes for Respondent, or any of its affiliates, under the Falcon agreement or any other agreement. *See* Ex. 16. While Mr. Souza confirms that Falcon negotiated and entered into an agreement with UAT for the manufacture of UNION cigarettes, Falcon never did business as a cigarette manufacturer due to the company's unsuccessful efforts to join the Tobacco Master Settlement Agreement. *See id.*

**C. Respondent has Produced No Concrete Documentation in Support of the Sale or Distribution of UNION Cigarettes prior to February 19, 2005**

Respondent also has produced no concrete documentation to support the sale or distribution of any UNION branded cigarettes prior to February 19, 2005. To the contrary, Respondent's own sales records for the UNION cigarettes show [REDACTED]

[REDACTED] *See* Exs. 19-21.

In fact, the only documentation Respondent has produced which even reflects the distribution of cigarettes prior to February 19, 2005 is Invoice. #35. Respondent has also produced no contemporaneous documentation to support the assertion that this invoice was actually sent to FTS Distributors California and/or that any cigarettes (let alone UNION cigarettes) were shipped in connection with the invoice. Specifically, Respondent has produced no enclosing communication, no courier receipt, no payment evidence and no follow up communication. *See* Ex. 17, Nos. 3-5; Ex. 18, Nos. 64-71.

To this end, it is also telling that the specimen submitted with the SOU (Ex. 8) is a layout of the cigarette pack packaging for the UNION box rather than a photograph of the final wrapped UNION product. Respondent has produced no evidence of purchase orders, invoices or bills of lading for any

finalized labels and coating for the UNION brand cigarettes during the 2004-2005 time period. *See* Ex. 22.

Respondent's only purported use of the UNION mark before February 19, 2005, outside that alleged to be reflected by Invoice #35, is "sample distribution activity" articulated for the first time in a series of Supplemental Responses to Petitioner's discovery requests. *See infra*. Respondent has failed to produced a single piece of concrete evidence to support this asserted sample distribution practice at the time in question.

Petitioner finds the lack of any such documentation particularly curious where, as here, the asserted sample distribution activity: (i) is introduced for the first time in Respondent's supplemental responses to Petitioner's discovery requests (and after questions on the validity of Respondent's first use had been raised); and (ii) is flatly inconsistent with the contents of Invoice #35 – which Respondent claims to be exemplary of its sample distribution activity. On this latter point, nowhere does Invoice #35 identify the "shipped" UNION carton as a "sample." *See* Ex. 23. To the contrary, Invoice #35 includes a specific \$7.00 invoice price and is stamped "paid."

In any event, Respondent's asserted practice of placing UNION sample cigarettes with other orders is also expressly contradicted by Respondent's later documented practice of sending early sample UNION cigarettes to its distributors. In those documented cases the UNION samples are not identified by brand name and are shipped with a variety of unmarked samples. *See* Ex. 32.

In sum, Respondent has produced no concrete evidence that UNION cigarettes were manufactured, sold and/or distributed, by or on behalf of Respondent, prior to the expiration of the SOU period on February 19, 2005. Moreover, Respondent's allegations are flatly contradicted by its own documents and unbiased third party testimony. Under such circumstances, the conclusion should be there was no timely use of the UNION mark by Respondent for cigarettes and that Invoice #35 was generated

or fabricated to provide documentary support of Respondent's SOU of February 7, 2005 and to avoid a loss of the filing priority in the UNION mark for cigarettes.<sup>2</sup>

## **II. Respondent's Alleged Use is Not Bona Fide Use in the Ordinary Course of Trade**

Even if it were presumed that (i) UNION cigarettes were actually manufactured prior to February 19, 2005, (ii) a carton of UNION cigarettes was actually shipped from Respondent to FTS California in connection with Invoice # 35 on February 3, 2005, and (iii) Respondent did engage in sample distribution activity prior to February 19, 2005, Respondent's activities do not amount to bona fide use in the ordinary course of trade.

Section 45 of the Lanham Act, defines the term "use in commerce" as follows:

The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be deemed to be in use in commerce—

(1) on goods when—

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, .... and

(B) the goods are sold or transported in commerce ....

15 U.S.C. § 1051(a)(1).

The definition of "use in commerce" was amended by the Trademark Law Revision Act of 1988 (TLRA) Public Law 100-667, 102 Stat. 3935, to add the phrase "the bona fide use of a mark in the ordinary course of trade, and *not made merely to reserve a right in a mark.*" 15 U.S.C. § 1127 (emphasis added). The primary purpose of the amendment was to eliminate the practice of "token use" or use made solely to reserve rights in a mark.

Before November 1989, the quantum of initial use of the mark was not critical to support a registration so long as it amounted to more than a mere sham attempt to contrive less than a token transaction. *Ralston-Purina Co. v. On-Cor Frozen Foods, Inc.*, 74 F.2d 801, 804-05, 223 U.S.P.Q. 979

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<sup>2</sup> To this end, Petitioner further notes that American Automotive Security Products Inc. (an entity identified as being under the same ownership as Respondent) and FTS Distributors of California (the recipient on Invoice #35) were found to have civilly conspired to manufacture non-existent agreements to assert baseless claims and "offsets". See Ex. 45, *Sandia Tobacco Mfgs., Inc. v. F.T.S. Distributors of California et al.*, No. 2:06-cv- 00704 (D.N.M.).

(Fed. Cir. 1984). A single instance of interstate use was sufficient if circumstances indicated that the applicant intended to continue use. *Id.*

As a result of the 1989 amendments, the Lanham Act now provides domestic applicants with the option of filing based either on pre-application use in commerce or based upon a bona fide intention to use the mark in commerce. 15 U.S.C. §1051(b). Under the intent-to-use system an applicant has three years (absent a showing of excusable non-use) from the date of the Notice of Allowance to demonstrate use necessary to support registration. Consequently, assessment of token use has become unnecessary and inappropriate. *Westrex Corp. v. New Sensor Corp.*, 83 U.S.P.Q.2d 1215 (2007); *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d 1768, 1774 (T.T.A.B. 1994) (noting that the purpose of the TLRA was to eliminate token use as a basis for registration and that the new, stricter standard contemplates instead, commercial use of the type common to the particular industry in question.); *see also McCarthy on Trademarks and Unfair Competition* § 19:109 (4<sup>th</sup> ed. 2010) (“a sale or sales made cannot be “token” in the sense that they are artificially made solely to reserve a right in a mark”).

**A. Of Union Cigarettes Reflected in Invoice #35 was, at Most, Classic “Token” Use Insufficient to Establish Bona Fide Use in the Ordinary Course of Trade**

The only “physical” evidence produced by Respondent of any use of the UNION mark prior to February 19, 2005 is a sole invoice from FTS Distributors C.D.A. to F.T.S. Distributors California dated February 3, 2005. This invoice is not supported by any other contemporaneous or analogous documentation and, as such, should be considered classic token use – an isolated use generated at the eleventh hour to avoid the expiration of the SOU deadline and Respondent’s loss of priority over Petitioner’s pending applications.

**B. Invoice #35 Does Not Reflect Bona Fide Use in Ordinary Course of Trade**

*1. Invoice #35 as Supportive of “Sale” of Goods is Highly Questionable*

Lack of corroborating evidence aside, Invoice #35 is also suspect due to both the amount allegedly charged for the subject carton of cigarettes, the asserted method of delivery of the cigarettes,

and the notable inconsistency of the document with the asserted sample distribution activity employed by Respondent later in 2005. Such factors weigh strongly against a finding of a “bona fide use in the ordinary course of trade.” *Choice First Distributors*, Canc. No. 92043707, at 6-7 (finding a beverage distributor’s generic, handwritten invoices containing “sketchy” information to be “highly questionable”).

The price listed on the invoice is not reasonably consistent with what should have been the total cost to Respondent for the product and for the delivery the cigarettes in the ordinary course of trade. Respondent alleges that the [REDACTED] amount reflected on Invoice #35 was the full cost paid by F.T.S. Distributors California for the carton of UNION brand cigarettes. *See* Ex. 10, No. 5. Specifically, ACC represents that the [REDACTED] reflected on Invoice #35 was negotiated between FTS Distributors C.D.A. and FTS Distributors California and covered the cost of manufacturing of the cigarettes, tax and freight to ship the carton of cigarettes. *See id.*

The terms offered by Falcon identified the manufacturer’s invoice price per carton of cigarettes (even without shipping costs) at [REDACTED]

[REDACTED] would not have covered what FTS Distributors paid for the cost of production of the cigarettes -- even without shipping costs factored in.

Separately, the cost of freight that would have been associated with this “sample distribution” is illogical. As acknowledged by Respondent, the carton was sent via Federal Ex for next day delivery. *See* Ex. 27, Nos. 19-20. While Federal Express does not provide historic pricing information, under current 2011 pricing, the least expensive option for sending a carton of cigarettes overnight from Oakland Park, FL to Murrietta, CA would be via Standard Federal Express delivery which would cost approximately \$63.00. *See* Ex. 51, Federal Express Pricing Sheet. Accordingly, even at 2005 rates, the cost of sending the carton via Federal Express overnight would have far exceeded any gain that Respondent would have realized from the sale of the cigarettes.

In any event, the sending of the carton via overnight delivery is inconsistent with Respondent’s



later documented “sample distribution” practice which occurred well after the SOU deadline. Respondent’s own documents reflect that samples were sent in individual, unmarked cigarette packs via ground delivery. *See* Ex. 32. Further, none of this documented activity supports the sending of a single carton, to a single distributor, for its full invoiced price. *See* Ex. 33.

2. *Invoice #35 as Reflective of Distribution of “Sample” Is Not Sufficient to Establish Bona Fide Use In The Ordinary Course of Trade*

Respondent’s attempted re-classification of Invoice #35 as demonstrative of its alleged “sample distribution activity” does not qualify as bona fide use in the ordinary course of business. To determine whether shipment of goods amounts to “use in commerce,” the Board looks to industry practice for guidance. *Automedx, Inc. v. Artivent Corp.*, 95 U.S.P.Q.2d 1976, at \*17-18 (T.T.A.B. 2010) (“use in commerce should be interpreted with flexibility to account for different industry practices”). Although shipment of what are identified as samples does not *per se* negate a finding of “use in commerce,” the Board has consistently found that, in many industries, a single shipment of goods, including as a sample, is not a sufficient “use in commerce” to support a trademark registration, and weighs toward a finding that the applicant was merely attempting to reserve rights in the mark. *See, e.g., Interlego A.G. & Lego Systems, Inc. v. Inventure Development Corp.*, Opp. No. 101119, at 6-7 (T.T.A.B. Dec. 28, 1999) (“creating one sample of a product and shipping it . . . is not adequate use of the mark in commerce to establish trademark rights and support a basis for filing an application.”) (*citing Bellanca Aircraft Corp. v. Bellanca Aircraft Eng.*, 190 U.S.P.Q. 158, 167 (T.T.A.B. 1976)); *Connors v. Perfect Partners, Inc.*, Canc. No. 92043707, at 5 (June 1, 2007) (interpreting the *Westrex* decision by holding that “[t]he sale of a single bottle to one retailer certainly alone does not constitute ‘use[.]’”); *Choice First Distribution, LLC v. Brown*, Canc. No. 9204416, at 7 (T.T.A.B. April 3, 2008) (“a few token shipments to friends . . . is certainly not sufficient to meet the standard of 15 U.S.C. § 1127”). For example, in *Perfect Partners*, the Board found that shipment of one bottle of vodka bearing the trademark in question, followed by a substantial period of nonuse, was inadequate to support the trademark registration. *Perfect Partners*,

Canc. No. 92043707, at 7. Similarly, in *Interlego*, the Board found that shipment of a toy sample between Applicant's offices in Singapore and San Francisco was insufficient use in commerce to support a trademark application. *Interlego*, Opp. No. 101119, at 6-7. See also *Lucent Info. Mgmt. v. Lucent Techs., Inc.*, 51 U.S.P.Q. 2d 1545, 1550, 186 F.3d 311, 318 (3d Cir. 1999) (finding, somewhat analogously, that one sale of a product, followed by a relatively small number of sales presentations, was not sufficient to establish priority in a mark); *Duffy v. Charles Schwab & Co.*, 54 U.S.P.Q.2d 1820, 1823-24, 97 F. Supp. 2d 592, 597-98 (D.N.J. 2000) (finding plaintiff could not establish prior use because "distribution of samples to a few companies without more does not constitute a sufficient bona fide use in commerce").

**C. Alleged Sample Distribution Activity Does Not Meet Regulatory Requirements Necessary to Establish Bona Fide Use In the Ordinary Course of Trade**

As a matter of principle, sales of goods lacking appropriate regulatory compliance or approval cannot be characterized as occurring "in the ordinary course of trade."<sup>3</sup> Indeed, the Board has often considered failure to comply with federal regulations and/or failure to obtain an appropriate regulatory license or approval as evidence that use of the corresponding trademark was not "bona fide" or made "in the ordinary course of trade." See, e.g. *Perfect Partners*, Canc. No. 92043707, at 4 (interpreting the *Westrex* decision and considering evidence that registrant had not obtained required alcohol label approval from the Department of the Treasury Bureau of Alcohol, Tobacco, and Firearms in determining validity of SOU); *Nintendo of Am., Inc. v. Adar Golad*, Opp. No. 91178130, at 20-23 (May 31, 2011) (evidence that applicant had not obtained proper regulatory approval for sale of an interactive video game indicated that applicant lacked a bona fide intent to use the associated mark) (citing *Boston Red Sox v. Sherman*, 88 U.S.P.Q.2d 1581, 1587 ("The absence of any documentary evidence on the part of an applicant regarding [intent to use] constitutes objective proof sufficient to prove that the applicant lacks a

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<sup>3</sup> Notably, Respondent has a history of doing business with individuals/companies demonstrating a lack of regard for regulatory compliance. In 2010, for example, a former owner of F.T.S. Distributors of California, Inc. (the recipient on Invoice #35) plead guilty to conspiracy to traffic contraband cigarettes. See Ex. 52, Judgment, *United States v. Silverman*, No. 09-cr-00299 (W.D. Wash.).

bona fide intention to use its mark in commerce.”)).

Packages of cigarettes sold or offered as samples in the “ordinary course of trade” must meet a number of federal and state regulatory requirements—requirements which the UNION branded cigarettes did not meet in the first quarter of 2005.

*1. Union Cigarettes Lacked FTC Label Approval*

All cigarettes sold or offered as samples in the United States must bear one of four pre-approved warnings from the Surgeon General, and such warnings must be rotated on a quarterly basis. *See* 15 U.S.C. § 1331 *et seq.*, attached hereto as Ex. 34. It is not enough, however, for a manufacturer and/or distributor to merely place a warning label on a package of cigarettes. Before offering any package for distribution, the manufacturer must, on a yearly basis, devise a proposed cigarette warning label rotational plan and obtain approval for such plan from the Federal Trade Commission (“FTC”). *Id.* § 1331(c)(1). A cigarette brand owner or manufacturer may not lawfully distribute cigarettes until the FTC has reviewed and authorized the planned rotational schedule. 15 U.S.C. § 1333(c). Respondent has produced no documents relating to the FTC approval of a rotational warning label schedule for UNION branded cigarettes for 2004 or the first quarter of 2005. *See* Ex. 35 No. 4; Ex. 17, Nos. 1-2; Ex. 38, No. 12; Ex. 39 No. 8.

Further, the FTC maintains as part of its public records the brand and/or manufacturer submitted and FTC approved cigarette health warning label plans. *See* Ex. 36. As of March 4, 2011, the FTC maintained public record binders of submitted and authorized cigarette health warning label plans, including for the time period from November 28, 2003 to April 27, 2006. *See id.* The FTC public record binders of submitted and approved cigarette health warning label plans for the time period from November 26, 2003 to April 27, 2006 do not reflect any submission for the UNION branded cigarettes of Respondent in this time frame. *Id.*

*2. Union Cigarettes Lacked Proper Identification of Manufacturer*

The TTB’s regulations regarding taxation of tobacco products require every domestically

produced package of tobacco products to include either the name and place of business (including city and state) of the manufacturer or the manufacturer's TTB permit number. 27 C.F.R. § 40.212 (2004), attached hereto as Ex. 37. Respondent's SOU represented that the specimen, Ex. 8, showed the mark as used in commerce. Nevertheless, the ACC cigarette pack layout specimen does not reflect the name and place of business of the manufacturer, packer, distributor or the manufacturer's TTB number, as required in TTB regulations. The cigarette pack packaging specimen submitted by Respondent with the SOU of February 7, 2005 was identical to the cigarette pack packaging for the packages contained within the carton referred to in Respondent's Invoice #35, ACC-000068. See Ex. 38. The cigarette pack packaging specimen submitted by Respondent with the SOU was a photocopy of the cigarette pack packaging for the packages of cigarettes contained within the carton referred to in Respondent's invoice #35, ACC-000068. See Ex. 38, Nos. 10 and 11.

3. *Florida Attorney General's Office Has No Record of Excise Taxes Having Been Paid in Connection with UNION Brand Cigarettes for 2005 Activity*

For all periods of time relevant to this proceeding, the State of Florida has required manufacturers or distributors of cigarettes to obtain stamps to be affixed to individual cigarette packs as evidence of payment of state excise tax. FLA. STAT § 210.06 (2005), attached hereto as Ex. 42. Florida Statute Title XIV Taxation and Finance Section 210.04(6) provides that The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may authorize any person to give away sample packages of cigarettes, each to contain not less than two cigarettes upon which the taxes have been paid. *Id.* § 210.04(6). Respondent has produced no documents relating to the Division's approval of the distribution of sample UNION branded cigarettes for the first quarter of 2005. Further, the State of Florida has confirmed that it has no records for the payment of any taxes on sale or distribution of cigarettes by MJC, ACC, FTS Distributors, Falcon, or United American Tobacco during the year 2005. See Ex. 43.

4. *UNION Cigarettes Were Not in Compliance with California Regulations Requiring Manufacturer and Brand to be Registered with the California Tobacco Directory*

Beginning June 30, 2004 only cigarette brands and roll-your-own products listed in the Attorney General's California Tobacco Directory have been permitted to be sold, offered for sale or possessed for sale in the state or shipped or otherwise distributed into the state. See Ex. 40 CAL. REV. & TAX. CODE § 30165.1(e)(2). To enter brands into the California Tobacco Directory, tobacco manufacturers must file certification and other required forms. *Id.* § 30165.1(b). The May 6, 2005 "Directory of Compliant Cigarettes and Roll Your Own Brand Families" does not identify Falcon, FTS Distributors California or ACC as a manufacturer nor does it identify UNION as a brand family in compliance with California law. See Ex. 41.

5. *UNION Cigarettes Allegedly Sent in Connection with Invoice #35 Were not Properly Labeled as "Samples" under California Regulations*

California Statute permits the distribution of untaxed samples. See Ex. 44, CAL. CODE REGS. tit. 18 § 4081. However, the manufacturer giving away such sample cigarettes or tobacco products must report the distribution on its monthly report or return and pay the tax due. *Id.* Each package of such samples shall have imprinted on it: "Not for Sale. Applicable state tax has been paid." and each package of sample tobacco products shall be clearly marked as a sample. *Id.*

Respondent has produced no documents relating to the Division's approval of the distribution of sample UNION branded cigarettes in California for the first quarter of 2005. Further, Applicant has effectively admitted that the UNION cigarettes allegedly provided in connection with Invoice #35 were not properly labeled as samples. See Ex. 38, Nos. 10 and 11.

**III. Respondent Should Not be Excused for Destruction of Evidence**

As of at least as early as July 17, 2008, Respondent was obligated to preserve any documents potentially relevant to the marks at issue. Respondent claims to have a document destruction policy that calls for documents over five years old to be destroyed. See Ex. 49. Respondent's document destruction policy should have been suspended at least as early as July 17, 2008 in regard to documents potentially relevant to the marks at issue (if they ever existed). Documents from July 17, 2003 or later that were

potentially relevant to the marks at issue, and (if they ever existed) should have been preserved by Respondent.

### **CONCLUSION**

WHEREFORE, N.V. Sumatra respectfully requests that the Board grant this Motion for Summary Judgment and cancel Respondent's registration because there was not a timely, bona fide use made in the ordinary course of trade.

Dated: December 1, 2011

Respectfully submitted,

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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the above and foregoing Motion and Memorandum of Law in Support of Applicant's Motion for Summary Judgment, including all exhibits thereto, has been mailed via Federal Express, postage prepaid, to the following counsel of record on this the 1st day of December, 2011:

Robert C. Kain, Jr.  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
900 Southeast 3rd Avenue  
Suite 205  
Fort Lauderdale, FL 333116

*Attorneys for Respondent American Cigarette Company, Inc.*

/tmv/  
\_\_\_\_\_  
Tara M. Vold

## **EXHIBIT 1**



TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Respondent,

Opposition Nos. 91185261  
91186841  
Cancellation No. 92052621

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Petitioner.

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**RESPONDENT'S REPLY TO PETITIONER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent, AMERICAN CIGARETTE COMPANY, INC. (herein Respondent), hereby responds and objects to Petitioner, N.V. Sumatra Tobacco Trading Company's (herein Petitioner) First Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Respondent objects to the extent the interrogatories purport to impose obligations on Petitioner beyond the requirements of the Federal Rules of Civil Procedure and the U.S. Patent and Trademark Office Trademark Rules of Practice.

2. Respondent objects to the extent the interrogatories neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent objects to the extent the interrogatories are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Respondent objects to the extent the interrogatories are duplicative.

5. Respondent objects to the extent the interrogatories seek information not within Respondent's knowledge.

6. Respondent objects to the extent the interrogatories seek information that Petitioner already possesses.

7. Respondent objects to the extent the interrogatories seek information that is publicly available.

8. Respondent objects to the extent the interrogatories seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Respondent will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Respondent objects to the extent the interrogatories seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Respondent will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the interrogatories as a present

employee of Respondent may be contacted through Respondent's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Respondent does not concede the relevance or admissibility of any information herein. Respondent reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Respondent asserts their responses and objections on the basis of information now reasonably available to them. Respondent reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTION TO SPECIFIC INTERROGATORIES**

##### **INTERROGATORY NO.1**

Identify the basis for the termination of the agreement between United American Tobacco, LLC and Falcon of America, LLC ("Falcon") produced in connection with the consolidated proceedings and identified as ACC 000698 thru ACC 000728 and hereafter referred to as "the Falcon Agreement."

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states that Falcon was unable to comply with the contract with United American Tobacco, LLC ("UAT"). Subsequently Basil Battah determined that UAT was unnecessary and decided that ACC would manufacture the cigarettes.

INTERROGATORY NO.2

Explain why the letter confirming the purchase of UNION cigarettes manufactured by Falcon (produced in connection with the consolidated proceedings and identified as ACC ACC\_000690 thru ACC\_000691), was signed by Mr. Basil Battah on behalf of FTS Distributors, whereas the Falcon Agreement identifies United American Tobacco, LLC as the purchasing entity for the UNION cigarettes.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states the reason is unknown as Mr. Battah does not recall.

INTERROGATORY NO.3

Identify any relationship between the United American Tobacco, LLC and Petitioner, or Mr. Battah or FTS Distributors.

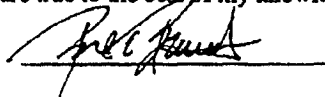
RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states Mr. Battah owned FTS Distributors and UAT.

INTERROGATORY NO.4

Identify all efforts made by Opposer obtain or verify approval from the Federal Trade Commission for a warning label plan for the UNION branded cigarettes in 2004 and 2005

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in

I, Basil Battah, president of American Cigarette Co. (Respondent), hereby affirm that the foregoing answers to these Interrogatories are true to the best of my knowledge.

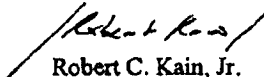


Basil Battah

As to objections:

Dated: June 17, 2011 \_\_\_\_\_

Respectfully Submitted:



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Attorneys for Respondent

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 17 day of June 2011, a true copy of the foregoing Respondent's Reply to Petitioner's First Set of Interrogatories was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643



Robert C. Kain, Jr.

## **EXHIBIT 2**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

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**OPPOSER'S SUPPLEMENTAL REPLY TO APPLICANT'S FIRST REQUEST FOR**

**ADMISSIONS**

Pursuant to Rules 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) First Request for Admissions.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the requests for admission purport to impose obligations on Opposer beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Opposer objects to the extent the requests for admissions neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the requests for admissions are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the requests for admissions are duplicative.

5. Opposer objects to the extent the requests for admissions seek information not within Opposer's knowledge.

6. Opposer objects to the extent the requests for admissions seek information that Applicant already possesses.

7. Opposer objects to the extent the requests for admissions seek information that is publicly available.

8. Opposer objects to the extent the requests for admissions seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the requests for admissions seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any



proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

11. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

**RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS FOR ADMISSIONS**

1. Other than the shipment reflected in Opposer's Invoice #35, ACC-000069, Opposer shipped no other cigarettes under the mark UNION outside the state of Florida in 2005.

Response: Denied

2. Other than the shipment reflected in Opposer's Invoice #35, ACC-000069, Opposer sold no other cigarettes under the mark UNION outside the state of Florida in 2005.

Response: Denied

3. Opposer does not commonly ship a single carton of cigarettes to a distributor or customer outside the state of Florida.

Response: Denied

3a. In the ordinary course of its business Opposer would not ship out of state a single carton of cigarettes to a customer or distributor.

Response: Denied

4. Opposer's packaging for cigarettes sold in the ordinary course of Opposer's trade comply with the Fair Packaging and Labeling Act.

Response: Objection calls for a legal conclusion.

27. F.T.S. Distributors C.D.A. and F.T.S. Distributors California are each controlled by the owner of Opposer.

Response: Admitted as to F.T.S. Distributors C.D.A. but Denied as to F.T.S. Distributors California.

28. F.T.S. Distributors C.D.A. and F.T.S. Distributors California are each controlled by Opposer.

Response: Denied

29. F.T.S. Distributors C.D.A. and Opposer are commonly owned.

Response: Admitted

30. F.T.S. Distributors C.D.A. and Opposer share common owners.

Response: Admitted

31. F.T.S. Distributors C.D.A. and Opposer have common shareholders.

Response: Admitted

32. F.T.S. Distributors C.D.A. and Opposer have common investors.

Response: Denied

33. F.T.S. Distributors C.D.A. is controlled by Opposer.

Response: Denied

34. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California were commonly owned.

Response: Denied

35. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California shared common owners.

Response: Denied

36. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California had common shareholders.

Response: Denied

37. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California had common investors.

Response: Denied

38. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California were each controlled by the owner of Opposer.

Response: Admitted as to F.T.S. Distributors C.D.A. but Denied as to F.T.S. Distributors California.

39. As of February 3, 2005, F.T.S. Distributors C.D.A. and F.T.S. Distributors California were each controlled by Opposer.

Response: Denied

40. As of February 3, 2005, F.T.S. Distributors C.D.A. and Opposer were commonly owned.

Response: Admitted

41. As of February 3, 2005, F.T.S. Distributors C.D.A. and Opposer shared common owners.

Response: Admitted

42. As of February 3, 2005, F.T.S. Distributors C.D.A. and Opposer had common shareholders.

Response: Admitted

43. As of February 3, 2005, F.T.S. Distributors C.D.A. and Opposer had common investors.

Response: Denied

44. As of February 3, 2005, F.T.S. Distributors C.D.A. is controlled by Opposer.

## **EXHIBIT 3**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

---

**OPPOSER'S SUPPLEMENTAL REPLY TO APPLICANT'S FIRST SET OF  
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) First Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the interrogatories purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the U.S. Patent and Trademark Office Trademark Rules of Practice.

2. Opposer objects to the extent the interrogatories neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the interrogatories are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the interrogatories are duplicative.

5. Opposer objects to the extent the interrogatories seek information not within Opposer's knowledge.

6. Opposer objects to the extent the interrogatories seek information that Applicant already possesses.

7. Opposer objects to the extent the interrogatories seek information that is publicly available.

8. Opposer objects to the extent the interrogatories seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the interrogatories seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Opposer will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the interrogatories as a present

employee of Opposer may be contacted through Opposer's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

**Response:** Basil Battah and Seamus Henry (re: all three requests above)

### **INTERROGATORY NO.3**

Explain in detail how Opposer conceived and arrived at the selection of the designation UNION for Opposer's products and services including the timing of the process, the alternatives considered and the factors used or considered in selecting the term.

**Response:** Opposer's predecessor, Maryjane Cigarette Co. ("MJC"), was the East Coast Distributor for Applicant's UNITED brand of cigarettes at least as early as May 2001. After receipt of an adverse U.S. Customs marking notice, commanding that the UNITED labels be corrected to make them less confusing to U.S. customers, MJC obtained a waiver to sell off the UNITED goods with the remaining printed labels. Applicant told U.S. Customs they would make the necessary changes, but never complied. During this time period, MJC decided to develop its own brand of cigarettes. On June 4, 2001, Opposer's predecessor in interest, MJC, filed several intent to use trademark applications including the above identified UNION mark, which filings included UNIQUE (Serial No. 78,067,088), UNIFY (Serial No. 78,067,089), UNITY (Serial No. 78,067,090), and UNISON (Serial No. 78,067,115). Two of the marks, UNIQUE (Serial No. 78,067,088) and UNISON (Serial No. 78,067,115), were not commercially pursued by MJC or Opposer and eventually the applications went abandoned. However, the other two marks, UNIFY (Serial No. 78,067,089, Reg. No. 2673293) and UNITY (Serial No. 78,067,090, Reg. No. 2696708), were used by MJC and were ultimately registered. MJC contacted Applicant about having Applicant manufacture the cigarettes in relation to the above



listed marks, but Applicant rejected this offer and MJC pursued the manufacturing and distribution on its own.

**INTERROGATORY NO.4**

Identify with particularity all goods and/or services offered and sold by Opposer in commerce in the United States using the term UNION.


**Response:** Cigarettes

**INTERROGATORY NO.5**

Identify with particularity when Opposer made first use of the mark UNION in the United States and describe the circumstances of that first use in the United States.

**Response:** In late 1999, ACC's predecessor in interest, Mary Jane Cigarettes Co., Inc. (herein "MJC") was formed. MJC contracted with a third party manufacturer, "Prime Movers" to make the first run of UNION branded cigarettes in 2003. That contract was not completed and MJC found a new manufacturer, Falcon of America, LLC, to make the first commercial production run of the UNION branded cigarettes. Falcon produced a few hundred cartons of UNION branded cigarettes sometime near the end of 2004. On February 3, 2005, MJC delivered to F.T.S. Distributors C.D.A, one of its cigarette distributors, UNION branded cigarettes. ACC was created on or about November 29, 2004. In 2005, ACC and MJC decided that ACC would take over the UNION brand and manufacture and sell the UNION cigarettes. ACC Exh. 023, 024. ACC was preparing to open and launch its manufacturing plant in January-March, 2009. UNION cigarette production was scheduled for the first week in March 2005. The first

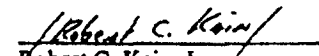
I, Basil Battah, president of American Cigarette Co. (Opposer), hereby affirm that the foregoing answers to these Supplemental interrogatories are true to the best of my knowledge.

  
Basil Battah

As to objections:

Dated: 11 13, 2009

Respectfully Submitted:

  
Robert C. Kain, Jr.  
Fla. Bar. 266760  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
750 Southeast Third Avenue, Suite 100  
Ft. Lauderdale, Florida 33316  
Phone: 954-768-9002  
Fax: 954-768-0158  
[rkain@ComplexIP.com](mailto:rkain@ComplexIP.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13 day of Nov 2009, a true copy of the foregoing Opposer's Supplemental Reply to Applicant's First Set of Interrogatories was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643

  
Robert C. Kain, Jr.

disc-Interr-1st-NV-to-ACC-Supp-REPLY-final.wpd

## **EXHIBIT 4**

No. A 09146



DEPARTEMEN KEHAKIMAN REPUBLIK INDONESIA  
DIREKTORAT JENDERAL HAK CIPTA, PATEN DAN MEREK  
SERTIFIKAT MEREK

Berdasarkan Undang-Undang Nomor 19 Tahun 1992 Tentang Merek, telah dicatat dalam Daftar Umum Perpanjangan Jangka Waktu Perlindungan Merek terdaftar yaitu:

Nama dan alamat pemilik : N.V. Sumatra Tobacco Trading  
Company, Jl. Sutomo No. 24B-C/D, Kant.  
Jl. Pattimura No. 3, Pematang Siantar

Nama dan alamat kuasa : ANTON SIMON  
Jl. Lautze No. 35,  
JAKARTA PUSAT.

Nomor Pendaftaran yang dimintakan : 186373 - 5 Oktober 1984  
perpanjangan.

Etiket Merek : (lihat sebaliknya).

Uraian Warna : (lihat sebaliknya).

Arti bahasa/huruf/angka asing : (lihat sebaliknya).  
dalam etiket merek.

Nomor Perpanjangan : 320784

Tanggal Perpanjangan : 29 Desember 1994

Kelas Barang/Jasa : 34

Jenis Barang/Jasa : (lihat sebaliknya)

Jangka waktu berlakunya pendaftaran : 10 Tahun, terhitung sejak tanggal 05-10-1993


Tangerang, 07 OCT 1996



An. DIREKTUR JENDERAL  
HAK CIPTA, PATEN DAN MEREK  
DIREKTUR MEREK

WIRATMO DIANGGORO, SH  
NIP. 040013293

Jalan Daan Mogot KM 24, TANGERANG-15135

<p style="text-align: center;">ETIKET MEREK</p>          <p style="text-align: center;"><b>UNION GOLD</b></p> <div style="text-align: center;">  </div>	<p style="text-align: center;">Uraian Warna</p> <p style="text-align: center;">-----</p>          <p>Arti bahasa/huruf/angka asing dalam etiket merek :</p> <p style="text-align: center;">-----</p>
<p>Jenis Barang/Jasa :</p> <p>Rokok sigaret, sigaret kretek, cerutu, tembakau shag, cengkeh rajangan, kertas sigaret, tembakau virginia, korek api (penyalapenyala). ==</p>	

#### KUTIPAN UNDANG-UNDANG NOMOR 19 TAHUN 1992

##### Pasal 7

Merek terdaftar mendapat perlindungan hukum untuk jangka waktu sepuluh tahun dan berlaku surut sejak tanggal penerimaan permintaan pendaftaran merek yang bersangkutan.

##### Pasal 36

- (1) Atas permintaan pemilik merek, jangka waktu perlindungan merek terdaftar dapat diperpanjang setiap kali untuk jangka waktu yang sama.
- (2) Permintaan perpanjangan jangka waktu perlindungan merek terdaftar sebagaimana dimaksud dalam ayat (1) diajukan secara tertulis oleh pemilik atau kuasanya dalam jangka waktu tidak lebih dari dua belas bulan dan sekurang-kurangnya 6 bulan sebelum berakhirnya jangka waktu perlindungan bagi merek terdaftar tersebut.

##### Pasal 37

Permintaan perpanjangan jangka waktu perlindungan merek terdaftar disetujui apabila :

- a. merek yang bersangkutan masih digunakan pada barang atau jasa sebagaimana disebut dalam Sertifikat Merek tersebut; dan
- b. barang atau jasa sebagaimana dimaksud dalam huruf a masih diproduksi dan diperdagangkan.



**TRANSLATION**  
( From the original document in the Indonesia Language)

Agno. : A 09146

**DEPARTMENT OF JUSTICE OF THE REPUBLIC OF INDONESIA  
GENERAL DIRECTORATE OF COPYRIGHT, PATENT AND  
TRADEMARK**

**TRADEMARK CERTIFICATE**

According to Trade Mark Law Number 19 of 1992, has been recorded in the Trademark Gazette that renewal period for the registered mark i.e.:

Name and Address of Trademark Owner: N.V. Sumatra Tobacco Trading Company  
Jl. Sutomo No. 248-C/D  
Off. Jl. Pattimura No. 3,  
Pematang Siantar

Name and Address of Attorney : ANTON SIMON  
Jl. Lautze No. 35,  
JAKARTA PUSAT.

Registered Number which is requested : 186373 - 5 October 1984  
Its renewal

Name of Label	: (please turn over)
Colour of Label	: (please turn over)
Meanings of foreign words/letters/	: (please turn over)
Figure of label	
Renewal Number	: 320784
Renewal date	: 29 December 1994
Class of goods/services/	: 34
Description of goods/service	: (please turn over)
Period of registration	: 10 years, starting from 05-10-1994

Tangerang, 07 October 1996

For behalf of GENERAL DIRECTOR  
COPYRIGHT, PATENT AND TRADEMARK

Seal of the General Directorate of  
Copyright, Patent & Trademark  
Department of Justice of the  
Republic of Indonesia

Signature/Illegible

WIRATMO DIANGGORO, SH  
NIP. 040013293

Jalan Dean Mogot KM 24. TANGERANG -15119

PERUM PERCETAKAN NEGARA RI

NAME OF LABEL	Colours of Label : _____
	Meanings of language/foreign words/ Figure of label : _____,
<p><b>UNION GOLD</b></p>          <p>Seal of the General Directorate of Copyright, Patent &amp; Trademark Department of Justice of the Republic of Indonesia</p>	
Description of Goods/Service :	
=== Cigarettes, kretek Cigarette, cigar, shag tobacco, cut of clove, cigarette paper, Virginia tobacco, matches (Lighters). ===	

QUOTATION LAW NUMBER 19 OF 1992

## Article 7

A registered trademark shall have legal protection for a duration of ten years, effective retroactively as from the date of receiving the application for registration of the trademark concerned.

## Article 36

- (1) Upon request of the trademark proprietor, the rights to exclusive use of a registered trademark can be renewed each time for the same period.
- (2) An application for renewal of a registered mark as mentioned in article (1) shall be made in written by the trademark proprietor or his attorney within twelve months and at least 6 months before the expiration of the registered mark.

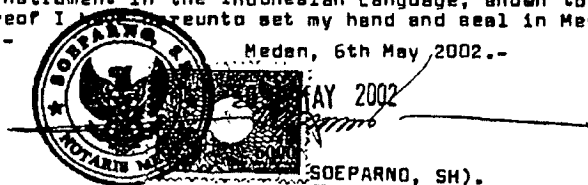
## Article 37

An application for renewal of a registered mark can be accepted if:

- a. The mark is still being used on the goods or service as mentioned in the Certificate of Registration
- b. Goods or service mentioned in letter a are still being produced and sold.

-I, the undersigned, SOEPARNO, Sarjana Hukum, Notary in Medan, do hereby --  
certified that the abovestated instrument is a full and faithful translation  
of the original instrument in the Indonesian Language, shown to me, Notary.--  
In testimony whereof I have hereunto set my hand and seal in Medan, on this  
day 6th May 2002.--

Medan, 6th May, 2002.-



SOEPARNO, SH).  
Notary in Medan.-

## **EXHIBIT 5**



**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-12-01 11:29:15 ET**

**Serial Number:** 78066805 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2972594

**Mark (words only):** UNION

**Standard Character claim:** No

**Current Status:** A Section 8 declaration has been accepted.

**Date of Status:** 2010-07-26

**Filing Date:** 2001-06-01

**Transformed into a National Application:** No

**Registration Date:** 2005-07-19

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** M60 -TMO Law Office 115

**Date In Location:** 2010-07-26

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. SMOKER'S BEST GROUP, LLC

**Address:**

SMOKER'S BEST GROUP, LLC  
645 WESTMORELAND DRIVE  
TUPELO, MS 38801  
United States

**Legal Entity Type:** Limited Liability Company

**State or Country Where Organized:** Mississippi

---

**GOODS AND/OR SERVICES**

---

**International Class:** 034

**Class Status:** Active

cigarettes

**Basis:** 1(a)

**First Use Date:** 2005-02-04

**First Use in Commerce Date:** 2005-02-04

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**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-11-30 - Automatic Update Of Assignment Of Ownership

2010-07-26 - Section 8 (6-year) accepted

2010-07-22 - TEAS Section 8 Received

2010-07-07 - TTAB Release Case To Trademarks

2010-07-07 - Cancellation terminated for Proceeding

2010-07-07 - Cancellation dismissed for Proceeding

2010-06-24 - Cancellation Instituted No. 999999

2010-06-23 - Cancellation Instituted No. 999999

2009-10-27 - TEAS Change Of Correspondence Received

2009-07-24 - Section 7 correction issued

2009-07-22 - Assigned To Paralegal

2009-06-23 - TEAS Section 7 Request Received

2007-05-16 - Automatic Update Of Assignment Of Ownership

2005-07-19 - Registered - Principal Register

2005-04-25 - Law Office Registration Review Completed

2005-04-19 - Assigned To LIE

2005-02-28 - Assigned To LIE

2005-02-23 - Allowed for Registration - Principal Register (SOU accepted)

2005-02-23 - Statement Of Use Processing Complete

2005-02-07 - Use Amendment Filed

2005-02-07 - TEAS Statement of Use Received

2004-08-24 - Extension 5 granted

2004-08-05 - Extension 5 filed

2004-08-05 - TEAS Extension Received

2004-07-21 - Case File In TIGRS

2004-04-26 - Assigned To Examiner

2004-02-18 - Extension 4 granted

2004-01-30 - Extension 4 filed

2004-01-30 - TEAS Extension Received

2003-09-10 - Extension 3 granted

2003-08-18 - Extension 3 filed

2003-08-19 - PAPER RECEIVED

2003-02-07 - Extension 2 granted

2003-02-07 - Extension 2 filed

2003-02-07 - TEAS Extension Received

2002-08-09 - Extension 1 granted

2002-08-06 - Extension 1 filed

2002-08-05 - TEAS Extension Received

2002-02-19 - NOA Mailed - SOU Required From Applicant

2001-11-27 - Published for opposition

2001-11-07 - Notice of publication

2001-09-06 - Approved For Pub - Principal Register

2001-08-29 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Robert C. Kain, Jr.

**Correspondent**

Robert C. Kain, Jr.

Kain & Associates, Attorneys at Law, P.A

Suite 205

900 SE Third Avenue

FT. LAUDERDALE FL 33316

Phone Number: 954-768-9002

---

**Drawing Page**

**Serial Number:**

78066805

**Applicant:**

Maryjane Cigarette Co., Inc.  
2315 N.W. 107th Avenue, B-15, Box 66  
Miami FL USA 33172



**Goods and Services:**

cigarettes

**Mark:**

UNION



NO OCR



06-01-2001

**Internet Transmission Date:**  
2001/06/01

**Serial Number:**  
78066805

**Filing Date:**  
2001/06/01



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 115  
RAM ACCOUNTING DATE: 20010601



NO OCR



06-01-2001

<SERIAL NUMBER> 78066805

<FILING DATE> 06/01/2001

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.22>

<APPLICANT INFORMATION>

<NAME> Maryjane Cigarette Co., Inc.  
<STREET> 2315 N.W. 107th Avenue, B-15, Box 66  
<CITY> Miami  
<STATE> FL  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 33172  
<TELEPHONE NUMBER> 305-718-4900

<APPLICANT ENTITY INFORMATION>

<CORPORATION: STATE/COUNTRY OF INCORPORATION> Florida

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> UNION

<TYPED FORM> Yes

\* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). \*

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<INTENT TO USE: SECTION 1(b)> Yes

\* Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. Section 1051(b), as amended.) \*

<INTERNATIONAL CLASS NUMBER> 034

<LISTING OF GOODS AND/OR SERVICES> cigarettes

<ATTORNEY INFORMATION>

<NAME> Robert C. Kain, Jr.  
<STREET> 750 Southeast Third Avenue, Suite 100  
<CITY> Ft. Lauderdale  
<STATE> FL  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 33316

<E-MAIL ADDRESS> ekotler@fleitkain.com  
<AUTHORIZE E-MAIL COMMUNICATION> Yes  
<FIRM NAME> Fleit, Kain, Gibbons, Gutman & Bongini, P.L.  
<TELEPHONE NUMBER> 954-768-9002  
<FAX NUMBER> 954-768-0158  
<ATTORNEY DOCKET NUMBER> 6182-23  
<OTHER APPOINTED ATTORNEY(S)> Martin Fleit, Jon Gibbons, Jose Gutman, Steve Bongini

<FEE INFORMATION>  
<TOTAL FEES PAID> 325  
<NUMBER OF CLASSES PAID> 1  
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

\* The USPTO is authorized to communicate with the applicant's attorney at the below e-mail address \*

<E-MAIL ADDRESS FOR CORRESPONDENCE> ekotler@fleitkain.com

<SIGNATURE AND OTHER INFORMATION>

\* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

\*

<SIGNATURE> /rck/  
<DATE> 06/01/2001  
<NAME> Robert C. Kain, Jr.  
<TITLE> Attorney

<MAILING ADDRESS>

<LINE> Robert C. Kain, Jr.  
<LINE> Fleit, Kain, Gibbons, Gutman & Bongini, P.L.



<LINE> 750 Southeast Third Avenue, Suite 100

<LINE> Ft. Lauderdale FL 33316

**<CREDIT CARD INFORMATION>**

<RAM SALE NUMBER> 115

<RAM ACCOUNTING DATE> 20010601

**<SERIAL NUMBER INFORMATION>**

<SERIAL NUMBER> 78/066805

<INTERNET TRANSMISSION DATE> Friday, 06-01-2001 10:56:20 EDT

<TEAS STAMP>

USPTO-2086190224-20010601105610453-78/066805-

1226e8247aa3101d91fe6dd87d7cbcd436c-CC-115-20010601105310453

E-MAIL ADDRESS FOR ACKNOWLEDGMENT> ekotler@fleitkain.com

## **EXHIBIT 6**

**United States Patent and Trademark Office**[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Thu Dec 1 04:35:46 EST 2011

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#)[Logout](#) Please logout when you are done to release system resources allocated for you.**Record 1 out of 1**[TARR Status](#) | [ASSIGN Status](#) | [TDR](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)**Typed Drawing**

<b>Word Mark</b>	UNION GOLD
<b>Goods and Services</b>	IC 034. US 002 008 009 017. G & S: CIGARETTES, KRETEK CIGARETTES, CIGARS, VIRGINIA TOBACCO, SHAG TOBACCO, CUT OF CLOVES FOR SMOKING, CIGARETTE PAPERS, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL AND MATCHES
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	76415303
<b>Filing Date</b>	June 7, 2002
<b>Current Filing Basis</b>	44E
<b>Original Filing Basis</b>	1B;44E
<b>Published for Opposition</b>	July 15, 2008
<b>Owner</b>	(APPLICANT) N.V. SUMATRA TOBACCO TRADING COMPANY CORPORATION INDONESIA Jalan Pattimura No. 3 Pematang Siantar Sumatera Utara INDONESIA
<b>Attorney of Record</b>	Tara M. Vold
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**Serial Number:** 76415303 Assignment Information      Trademark Document Retrieval

**Registration Number:** (NOT AVAILABLE)

**Mark (words only):** UNION GOLD

**Standard Character claim:** No

**Current Status:** An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

**Date of Status:** 2008-07-17

**Filing Date:** 2002-06-07

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**Attorney Assigned:**  
LEIPZIG MARC J

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2008-06-06

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

**I. N.V. SUMATRA TOBACCO TRADING COMPANY**

**Address:**  
N.V. SUMATRA TOBACCO TRADING COMPANY  
Jalan Pattimura No. 3 Pematang Siantar  
Sumatera Utara  
Indonesia  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Indonesia

---

**GOODS AND/OR SERVICES**

---

**International Class:** 034

**Class Status:** Active

CIGARETTES, KRETEK CIGARETTES, CIGARS, VIRGINIA TOBACCO, SHAG TOBACCO, CUT OF CLOVES FOR SMOKING, CIGARETTE PAPERS, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL AND MATCHES

**Basis:** 44(e)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

---

**ADDITIONAL INFORMATION**

---

**Foreign Registration Number:** 320784**Foreign Registration Date:** 1994-12-29**Country:** Indonesia**Foreign Expiration Date:** 2014-10-05

---

**MADRID PROTOCOL INFORMATION**

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-04-14 - Assigned To Examiner

2008-07-17 - Opposition instituted for Proceeding

2008-07-17 - Opposition papers filed

2008-07-15 - Published for opposition

2008-06-25 - Notice of publication

2008-06-06 - Law Office Publication Review Completed

2008-06-05 - Approved for Pub - Principal Register (Initial exam)

2007-09-20 - Teas/Email Correspondence Entered

2007-09-20 - Communication received from applicant

2007-09-20 - TEAS Response to Office Action Received

2007-04-18 - Attorney Revoked And/Or Appointed

2007-04-18 - TEAS Revoke/Appoint Attorney Received

2007-04-09 - Attorney Revoked And/Or Appointed

2007-04-09 - TEAS Revoke/Appoint Attorney Received  
2007-03-23 - NON-FINAL ACTION E-MAILED  
2007-03-23 - Non-Final Action Written  
2007-02-06 - Teas/Email Correspondence Entered  
2007-02-06 - Communication received from applicant  
2007-01-10 - TEAS Response to Office Action Received  
2006-08-11 - NON-FINAL ACTION E-MAILED  
2006-08-11 - Non-Final Action Written  
2006-08-11 - Previous Allowance Count Withdrawn  
2006-07-28 - Assigned To LIE  
2006-07-26 - Approved for Pub - Principal Register (Initial exam)  
2006-05-12 - Teas/Email Correspondence Entered  
2006-05-01 - Communication received from applicant  
2006-05-01 - TEAS Response to Office Action Received  
2006-02-22 - TEAS Change Of Correspondence Received  
2005-11-02 - NON-FINAL ACTION E-MAILED  
2005-11-02 - Non-Final Action Written  
2005-10-06 - TEAS Change Of Correspondence Received  
2005-09-06 - LIE Checked Susp - To Atty For Action  
2004-12-07 - Report Completed Suspension Check Case Still Suspended  
2003-10-19 - Case File In TICRS  
2003-04-18 - Letter of suspension mailed  
2003-04-15 - Sec. 1(B) Claim Deleted  
2003-03-19 - Communication received from applicant  
2003-03-19 - PAPER RECEIVED

2002-09-25 - Non-final action mailed

2002-09-13 - Assigned To Examiner

2002-09-12 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Tara M. Vold

**Correspondent**

TARA M VOLD

FULBRIGHT & JAWORSKI LLP

801 PENNSYLVANIA AVENUE NW

WASHINGTON, DC 20004

Phone Number: 202-662-0200

Fax Number: 202-662-4643

**Domestic Representative**

Tara M. Vold

Phone Number: 202-662-0200

Fax Number: 202-662-4643

---



06-07-2002

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

4

Applicant: N.V. SUMATRA TOBACCO TRADING COMPANY  
a corporation of Indonesia

Address: Jalan Pattimura No. 3  
Pematang Siantar  
Sumatera Utara, Indonesia

Basis: Intent to Use (15 U.S.C. § 1051(b), as amended)  
Indonesian Registration No. 320784 (15 U.S.C. § 1126(e), as amended)

Goods: CIGARETTES, KRETEK CIGARETTES, CIGARS, TOBACCO, CUT  
OF CLOVE, CIGARETTE PAPERS, LIGHTERS AND MATCHES in  
International Class 34

Filing  
Correspondent: Cathy J. Futrowsky, Esq., Reg. No. 37,172  
Lisa W. Rosaya, Esq.  
Coudert Brothers LLP  
1627 I Street, N.W., Suite 1200  
Washington, D.C. 20006-4007  
Tel: (202) 775-5100  
Fax: (202) 775-1168

UNION GOLD

Application to register – UNION GOLD  
WASHINGTON 251748v1

U.S. Patent & TMO/TM



76415303



76415303

TRADEMARK APPLICATION SERIAL NO. \_\_\_\_\_

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

06/13/2002 SWILSON 00000151 76415303

01 FC:361

325.00 OP

PTO-1555  
(5/87)

## COUDERT BROTHERS LLP

ATTORNEYS AT LAW

1627 I STREET, N.W.  
WASHINGTON, D.C. 20006-4007  
TEL: (202) 775-5100  
FAX: (202) 775-1168  
WWW.COUDERT.COM

June 7, 2002

Commissioner for Trademarks  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

ATTN: BOX NEW APP/FEE

Re: New U.S. Trademark Application  
Applicant: N.V. Sumatra Tobacco Trading Company  
Mark: **UNION GOLD**  
International Class 34  
Our Reference: 51223-01

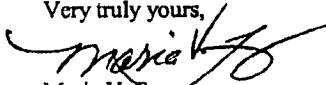
Dear Sir/Madam:

Enclosed please find the following

1. Trademark application with Declaration;
2. A formal Drawing Page;
3. Certified copy of Indonesian Registration No. 320784; and
3. A check in the amount of \$325.00 to cover the requisite government filing fee for the new application.

Should the check become detached and/or additional fees be required, please charge Deposit Account No. 03-3370.

Very truly yours,

  
Maria V. Fry  
Legal Assistant

Enclosures

WASHINGTON 252601v1

**NORTH AMERICA**  
DENVER, LOS ANGELES, MONTREAL,  
NEW YORK, PALO ALTO, SAN FRANCISCO,  
SAN JOSE, WASHINGTON

**EUROPE**  
ANTWERP, BERLIN, BRUSSELS, FRANKFURT,  
GHENT, LONDON, MILAN, MOSCOW, MUNICH,  
PARIS, ST. PETERSBURG

**ASIA/PACIFIC**  
ALMATY, BANGKOK, BEIJING, HONG KONG,  
JAKARTA, SINGAPORE, SYDNEY, TOKYO

**ASSOCIATED OFFICES**  
BUDAPEST, MEXICO CITY, PRAGUE, ROME,  
SHANGHAI, STOCKHOLM

TRADEMARK FEE PROCESS  
RECEIVED  
2002 JUN -7 P 1:40  
US PATENT &  
TRADEMARK OFFICE

**BOX NEW APP/FEE**  
**TRADEMARKS**  
Attorney Docket No. 51223-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
APPLICATION FOR TRADEMARK REGISTRATION

MARK:               **UNION GOLD**  
APPLICANT:        N.V. SUMATRA TOBACCO TRADING COMPANY  
CLASS:             34

N.V. SUMATRA TOBACCO TRADING COMPANY, a corporation organized under the laws of the country of Indonesia, located and doing business at Jalan Pattimura No. 3, Pematang Siantar, Sumatera Utara, Indonesia, requests registration of the above-identified trademark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 *et. seq.*, as amended) for:

CIGARETTES, KRETEK CIGARETTES, CIGARS, TOBACCO, CUT OF CLOVE,  
CIGARETTE PAPERS, LIGHTERS AND MATCHES in International Class 34.

Applicant has a *bona fide* intention to use the mark in commerce on or in connection with the above-identified goods and services (15 U.S.C. § 1051(b), as amended).

Applicant has a *bona fide* intention to use the mark in commerce in connection with the above-identified goods and, accompanying this application, submits a certified copy of Indonesian Registration No. 320784, renewal registration date of December 29, 1994, valid until October 5, 2004, in accordance with 15 U.S.C. § 1126(e), as amended.

Application to register – **UNION GOLD**  
WASHINGTON 251748v1

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of applicant; he/she believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. § 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form or in such near resemblance thereto as may be likely when applied to the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his/her knowledge are true and all statements made on information and belief are believed to be true.

POWER OF ATTORNEY

Applicant hereby appoints Pamela T. Church, Philippe Bennett, Robert E. Hanlon, Walter Scott, Lara A. Holzman and Donna Corby Sobel, all members of the Bar of the State of New York, Cathy J. Futrowsky, Reg. No. 37,172, a member of the Bars of Massachusetts, Florida and the District of Columbia, and Lisa W. Rosaya, a member of the Bars of New Jersey and the District of Columbia, all of the firm Coudert Brothers LLP, 1627 I Street N.W., Washington, D.C. 20006-4007, phone 202/775-5100, and its attorneys, to prosecute this application for registration, to transact all business in the United States Patent and Trademark Office in

Application to register – **UNION GOLD**  
WASHINGTON 251748v1

connection therewith, and to receive the Certificate of Registration. Please direct all correspondence and communications to Cathy J. Futrowsky, Esq. at 202/736-1847 or Lisa W. Rosaya, Esq. at 202/736-1817.

APPOINTMENT OF DOMESTIC REPRESENTATIVE

Applicant hereby designates Pamela T. Church, Philippe Bennett, Robert E. Hanlon, Walter Scott, Lara A. Holzman, Donna Corby Sobel, Cathy J. Futrowsky, and Lisa W. Rosaya, all of the firm Coudert Brothers LLP, having an address of 1627 I Street, NW, Washington, D.C. 20006-4007, phone 202/775-5100, and its attorneys, its domestic representative upon whom all notices or process in proceedings affecting the above referenced application may be served.

N.V. SUMATRA TOBACCO TRADING COMPANY

Date: 20 May, 2002

By: 

Name: TIMIN BINGEI

Title: Director

Application to register -- UNION GOLD  
WASHINGTON 251748v1

No A 09146



DEPARTEMEN KEHAKIMAN REPUBLIK INDONESIA  
DIREKTORAT JENDERAL HAK CIPTA, PATEN DAN MEREK

SERTIFIKAT MEREK

Berdasarkan Undang-Undang Nomor 19 Tahun 1992 Tentang Merek, telah dicatat dalam Daftar Umum Perpanjangan Jangka Waktu Perlindungan Merek terdaftar yaitu :

Nama dan alamat pemilik : N.V. Sumatra Tobacco Trading  
Company, Jl. Sutomo No. 248-C/D, Kant.  
Jl. Pattimura No. 3, Pematang Siantar.

Nama dan alamat kuasa : ANTON SIMON  
Jl. Lautze No. 35,  
JAKARTA PUSAT.

Nomor Pendaftaran yang dimintakan : 186373 - 5 Oktober 1984.  
perpanjangan.  
Etiket Merek : (lihat sebaliknya).  
Uraian Warna : (lihat sebaliknya).  
Arti bahasa/huruf/angka asing : (lihat sebaliknya).  
dalam etiket merek.  
Nomor Perpanjangan : 320784  
Tanggal Perpanjangan : 29 Desember 1994  
Kelas Barang/Jasa : 34.  
Jenis Barang/Jasa : (lihat sebaliknya)  
Jangka waktu berlakunya pendaftaran : 10 Tahun, terhitung sejak tanggal 05-10-1994


Tangerang, 07 OCT 1995 19...



An. DIREKTUR JENDERAL  
HAK CIPTA, PATEN DAN MEREK  
DIREKTUR MEREK

WIRATMO DIANGGORO, SH  
NIP. 040013293

Jalan Daan Mogot KM. 24, TANGERANG 15139

<p style="text-align: center;">ETIKET MEREK</p>      <p style="text-align: center;"><b>UNION GOLD</b></p> 	<p style="text-align: center;">Uraian Warna</p> <p style="text-align: center;">-----</p>   <p>Arti bahasa/huruf/angka asing dalam etiket merek :</p> <p style="text-align: center;">-----</p>
<p><b>Jenis Barang/Jasa :</b></p> <p>Rokok sigaret, sigaret kretek, cerutu, tembakau shag, cengkeh rajangan, kertas sigaret, tembakau virginia, korek api (penyalapenyala). ==</p>	

**KUTIPAN UNDANG-UNDANG NOMOR 19 TAHUN 1992**

**Pasal 7**

Merek terdaftar mendapat perlindungan hukum untuk jangka waktu sepuluh tahun dan berlaku surut sejak tanggal penerimaan permintaan pendaftaran merek yang bersangkutan.

**Pasal 36**

- (1) Atas permintaan pemilik merek, jangka waktu perlindungan merek terdaftar dapat diperpanjang setiap kali untuk jangka waktu yang sama.
- (2) Permintaan perpanjangan jangka waktu perlindungan merek terdaftar sebagaimana dimaksud dalam ayat (1) diajukan secara tertulis oleh pemilik atau kuasanya dalam jangka waktu tidak lebih dari dua belas bulan dan sekurang-kurangnya 6 bulan sebelum berakhirnya jangka waktu perlindungan bagi merek terdaftar tersebut.

**Pasal 37**

Permintaan perpanjangan jangka waktu perlindungan merek terdaftar disetujui apabila :

- a. merek yang bersangkutan masih digunakan pada barang atau jasa sebagaimana disebut dalam Sertifikat Merek tersebut; dan
- b. barang atau jasa sebagaimana dimaksud dalam huruf a masih diproduksi dan diperdagangkan.



**TRANSLATION**  
( From the original document in the Indonesia Language)

Agno. : A 09146

**DEPARTMENT OF JUSTICE OF THE REPUBLIC OF INDONESIA  
GENERAL DIRECTORATE OF COPYRIGHT, PATENT AND  
TRADEMARK**

**TRADEMARK CERTIFICATE**

According to Trade Mark Law Number 19 of 1992, has been recorded in the Trademark Gazette that renewal period for the registered mark i.e.:

Name and Address of Trademark Owner: N.V. Sumatra Tobacco Trading Company  
Jl. Sutomo No. 248-C/D  
Off. Jl. Pattimura No. 3,  
Pematang Siantar

Name and Address of Attorney : ANTON SIMON  
Jl. Lautze No. 35,  
JAKARTA PUSAT.

Registered Number which is requested : 186373 - 5 October 1984  
Its renewal

Name of Label	: (please turn over)
Colour of Label	: (please turn over)
Meanings of foreign words/letters/	: (please turn over)
Figure of label	
Renewal Number	: 320784
Renewal date	: 29 December 1994
Class of goods/services/	: 34
Description of goods/service	: (please turn over)
Period of registration	: 10 years, starting from 05-10-1994

Tangerang, 07 October 1996

For behalf of GENERAL DIRECTOR  
COPYRIGHT, PATENT AND TRADEMARK

Seal of the General Directorate of  
Copyright, Patent & Trademark  
Department of Justice of the  
Republic of Indonesia

Signature/Illegible

WIRATMO DIANGGORO, SH  
NIP. 040013293

Jalan Duren Mogot KM 24. TANGERANO -15119

PERUM PERCETAKAN NEGARA RI



NAME OF LABEL	Colours of Label :
	Meanings of language/foreign words/ Figure of label :
<b>UNION GOLD</b>	
Seal of the General Directorate of Copyright, Patent & Trademark Department of Justice of the Republic of Indonesia	
Description of Goods/Service : == Cigarettes, kretek Cigarette, cigar, shag tobacco, cut of clove, cigarette paper, Virginia tobacco, matches (Lighters). ==	

QUOTATION LAW NUMBER 19 OF 1992

## Article 7

A registered trademark shall have legal protection for a duration of ten years, effective retroactively as from the date of receiving the application for registration of the trademark concerned.

## Article 36

- (1) Upon request of the trademark proprietor, the rights to exclusive use of a registered trademark can be renewed each time for the same period.
- (2) An application for renewal of a registered mark as mentioned in article (1) shall be made in written by the trademark proprietor or his attorney within twelve months and at least 6 months before the expiration of the registered mark.

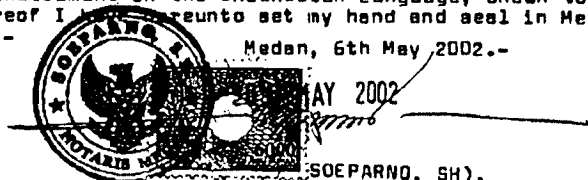
## Article 37

An application for renewal of a registered mark can be accepted if :

- The mark is still being used on the goods or service as mentioned in the Certificate of Registration
- Goods or service mentioned in letter a are still being produced and sold.

-I, the undersigned, SOEPARNO, Sarjana Hukum, Notary in Medan, do hereby ---  
certified that the abovestated instrument is a full and faithful translation  
of the original instrument in the Indonesian Language, shown to me, Notary.--  
In testimony whereof I have hereunto set my hand and seal in Medan, on this  
day 6th May 2002.--

Medan, 6th May, 2002.-



SOEPARNO, SH).  
Notary in Medan.

## **EXHIBIT 7**



## United States Patent and Trademark Office

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## Record 1 out of 1

[TARR Status](#)[ASSIGN Status](#)[IDR](#)[TTAB Status](#)

( Use the "Back" button of the Internet

Browser to return to TESS)

**Word Mark** U UNION

**Goods and Services** IC 034. US 002 008 009 017. G & S: CIGARETTES, KRETEK CIGARETTES, WHITE CIGARETTES, CIGARETTE FILTERS, CIGARS, TOBACCO, RAW TOBACCO, VIRGINIA TOBACCO, CIGARETTE TOBACCO, SNUFF TOBACCO, CHEWING TOBACCO, CUT OF CLOVES FOR SMOKING, CORNHUSK TOBACCO AND SMOKERS' ARTICLES, NAMELY, CIGARETTE PIPES, CIGARETTE PAPERS, TOBACCO POUCHES, PIPES, ASHTRAYS NOT OF PRECIOUS METAL, MATCHES, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL, CIGARETTE CASES AND HOLDERS NOT OF PRECIOUS METAL AND MATCH BOXES AND HOLDERS NOT OF PRECIOUS METAL

**Mark****Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS**Design** 03.01.02 - Lion insignia (heraldic lion)

**Search Code** 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon  
 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon  
 24.11.01 - Crowns closed at the top  
 26.09.03 - Incomplete squares; Squares, incomplete

**Serial Number** 76415305**Filing Date** June 7, 2002**Current Filing Basis** 1B;44E**Original Filing Basis** 1B;44D

**Published for Opposition** September 9, 2008

**Owner** (APPLICANT) N.V. SUMATRA TOBACCO TRADING COMPANY CORPORATION INDONESIA Jalan Pattimura No. 3 Pematang Siantar Sumatera Utara INDONESIA

**Attorney of Record** Tara M. Vold

**Priority Date** May 16, 2002

**Description of Mark** The color(s) red, white, and golden yellow is/are claimed as a feature of the mark. The mark consists of a rectangular box the top of which features an upside down triangle containing a design element which consists of a crest with the letter "U", a crown and griffins appearing in golden yellow. The background of the crest with the letter "U" is red. The bottom of the upside down triangle is bordered by a red line, a white line and then a golden yellow line. Below the upside down triangle are the block letters "UNION" in white with golden yellow borders with a red background.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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This page was generated by the TARR system on 2011-12-01 11:30:02 ET

Serial Number: 76415305 Assignment Information      Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): U UNION

Standard Character claim: No

**Current Status:** An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

**Date of Status:** 2008-10-07

**Filing Date:** 2002-06-07

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**Attorney Assigned:**  
SMITH BRIDGETT G

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2008-08-06

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. N.V. SUMATRA TOBACCO TRADING COMPANY

**Address:**  
N.V. SUMATRA TOBACCO TRADING COMPANY

Jalan Pattimura No. 3 Pematang Siantar  
Sumatera Utara  
Indonesia

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Indonesia

---

### GOODS AND/OR SERVICES

---

**International Class:** 034

**Class Status:** Active

CIGARETTES, KRETEK CIGARETTES, WHITE CIGARETTES, CIGARETTE FILTERS, CIGARS, TOBACCO, RAW TOBACCO, VIRGINIA TOBACCO, CIGARETTE TOBACCO, SNUFF TOBACCO, CHEWING TOBACCO, CUT OF CLOVES FOR SMOKING, CORNHUSK TOBACCO AND SMOKERS' ARTICLES, NAMELY, CIGARETTE PIPES, CIGARETTE PAPERS, TOBACCO POUCHES, PIPES, ASHTRAYS NOT OF PRECIOUS METAL, MATCHES, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL, CIGARETTE CASES AND HOLDERS NOT OF PRECIOUS METAL AND MATCH BOXES AND HOLDERS NOT OF PRECIOUS METAL

**Basis:** 1(b), 44(e)

**First Use Date:** (DATE NOT AVAILABLE)

**First Use in Commerce Date:** (DATE NOT AVAILABLE)

---

### ADDITIONAL INFORMATION

---

**Color(s) Claimed:** The color(s) red, white, and golden yellow is/are claimed as a feature of the mark.

**Description of Mark:** The mark consists of a rectangular box the top of which features an upside down triangle containing a design element which consists of a crest with the letter "U", a crown and griffins appearing in golden yellow. The background of the crest with the letter "U" is red. The bottom of the upside down triangle is bordered by a red line, a white line and then a golden yellow line. Below the upside down triangle are the block letters "UNION" in white with golden yellow borders with a red background.

**Design Search Code(s):**

03.01.02 - Lion insignia (heraldic lion)

24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon

24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon

24.11.01 - Crowns closed at the top

26.09.03 - Incomplete squares; Squares, incomplete

**Foreign Application Number:** D00-02-09771

**Foreign Registration Number:** 536434

**Foreign Registration Date:** 2003-04-21

**Country:** Indonesia

**Foreign Filing Date:** 2002-05-16

**Foreign Expiration Date:** 2012-05-16

---

### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

---

**PROSECUTION HISTORY**

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2009-04-14 - Assigned To Examiner

2008-12-03 - PAPER RECEIVED

2008-10-07 - Opposition instituted for Proceeding

2008-10-07 - Opposition instituted for Proceeding

2008-10-07 - Opposition papers filed

2008-09-09 - Published for opposition

2008-08-20 - Notice of publication

2008-08-06 - Law Office Publication Review Completed

2008-08-04 - Approved For Pub - Principal Register

2008-07-18 - Teas/Email Correspondence Entered

2008-07-17 - Communication received from applicant

2008-07-17 - TEAS Request For Reconsideration Received

2008-07-01 - Teas/Email Correspondence Entered

2008-07-01 - Communication received from applicant

2008-07-01 - TEAS Request For Reconsideration Received

2008-06-19 - Notification Of Action Denying Req For Recon E-Mailed

2008-06-19 - Action Granting Req For Recon E-Mailed

2008-06-19 - Continuation of final refusal mailed

2007-11-20 - Teas/Email Correspondence Entered

2007-11-20 - Communication received from applicant

2007-11-20 - TEAS Request For Reconsideration Received

2007-07-28 - Notification Of Final Refusal Emailed

2007-07-28 - Final refusal e-mailed  
2007-07-28 - Final Refusal Written  
2007-07-13 - Teas/Email Correspondence Entered  
2007-07-13 - Communication received from applicant  
2007-07-12 - TEAS Response to Office Action Received  
2007-04-18 - Attorney Revoked And/Or Appointed  
2007-04-18 - TEAS Revoke/Appoint Attorney Received  
2007-04-09 - Attorney Revoked And/Or Appointed  
2007-04-09 - TEAS Revoke/Appoint Attorney Received  
2007-02-06 - Report Completed Suspension Check Case Still Suspended  
2007-02-06 - Assigned To LIE  
2006-07-26 - LETTER OF SUSPENSION E-MAILED  
2006-07-26 - Suspension Letter Written  
2006-05-12 - Teas/Email Correspondence Entered  
2006-05-01 - Communication received from applicant  
2006-05-01 - TEAS Response to Office Action Received  
2006-02-22 - TEAS Change Of Correspondence Received  
2005-11-02 - NON-FINAL ACTION E-MAILED  
2005-11-02 - Non-Final Action Written  
2005-10-06 - TEAS Change Of Correspondence Received  
2005-09-06 - LIE Checked Susp - To Atty For Action  
2004-12-07 - Report Completed Suspension Check Case Still Suspended  
2003-10-19 - Case File In TIGRS  
2003-04-18 - Letter of suspension mailed  
2003-03-20 - Communication received from applicant



2003-03-20 - PAPER RECEIVED

2002-09-25 - Non-final action mailed

2002-09-13 - Assigned To Examiner

2002-09-12 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Tara M. Vold

**Correspondent**

VALYNIA SIMMONS  
FULBRIGHT & JAWORSKI LLP  
801 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004  
Phone Number: 202-662-0200  
Fax Number: 202-662-4643

**Domestic Representative**

Tara M. Vold  
Phone Number: 202-662-0200  
Fax Number: 202-662-4643

---



06-07-2002

U.S. Patent & TMOs/TM Mail Rpt. Dt. #40

4

**Applicant:** N.V. SUMATRA TOBACCO TRADING COMPANY  
a corporation of Indonesia

**Address:** Jalan Pattimura No. 3  
Pernatang Siantar  
Sumatera Utara, Indonesia

**Basis:** Intent to Use (15 U.S.C. § 1051(b), as amended)  
Indonesian Application Serial No.: D00 2002 09771 09876,  
filed May 16, 2002 (15 U.S.C. § 1126(d), as amended)

**Goods:** CIGARETTES, KRETEK CIGARETTES, WHITE CIGARETTES,  
CIGARETTE FILTERS, CIGARS, TOBACCO, RAW TOBACCO,  
VIRGINIA TOBACCO, CIGARETTE TOBACCO, SNUFF TOBACCO,  
CHEWING TOBACCO, CUT OF CLOVE, CORNHUSK TOBACCO,  
SMOKERS' ARTICLES; CIGARETTE PIPES, CIGARETTE PAPERS,  
TOBACCO POUCHES, ASHTRAYS, MATCHES AND LIGHTERS in  
International Class 34.

**Filing  
Correspondent:** Cathy J. Futrowsky, Esq., Reg. No. 37,172  
Lisa W. Rosaya, Esq.  
Coudert Brothers LLP  
1627 I Street, N.W., Suite 1200  
Washington, D.C. 20006-4007  
Tel: (202) 775-5100  
Fax: (202) 775-1168



Application to register – UNION & Design  
WASHINGTON 251754v1

U.S. Patent & TMOs/TM



76415305

76415305

TRADEMARK APPLICATION SERIAL NO.

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

06/13/2002 SWILSON 00000153 76415305

01 FC:361

325.00 DP

PTO-1555  
(5/87)

## COUDERT BROTHERS LLP

ATTORNEYS AT LAW

1627 I STREET, N.W.  
WASHINGTON, D.C. 20006  
TEL: (202) 775-5100  
FAX: (202) 775-1188  
WWW.COUDERT.COM

**NORTH AMERICA**  
DENVER, LOS ANGELES, MONTREAL,  
NEW YORK, PALO ALTO, SAN FRANCISCO,  
SAN JOSE, WASHINGTON

**EUROPE**  
ANTWERP, BERLIN, BRUSSELS, FRANKFURT,  
GHENT, LONDON, MILAN, MOSCOW, MUNICH,  
PARIS, ST. PETERSBURG

**ASIA/PACIFIC**  
ALMATY, BANGKOK, BEIJING, HONG KONG,  
JAKARTA, SINGAPORE, SYDNEY, TOKYO

**ASSOCIATED OFFICES**  
BUDAPEST, MEXICO CITY, PRAGUE, ROME,  
SHANGHAI, STOCKHOLM

June 7, 2002

Commissioner for Trademarks  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**ATTN: BOX NEW APP/FEE**

Re: New U.S. Trademark Application  
Applicant: N.V. Sumatra Tobacco Trading Company  
Mark: **UNION & Design**  
International Class 34  
Our Reference: 51223-01

Dear Sir/Madam:

Enclosed please find the following

1. Trademark application with Declaration;
2. A formal Drawing Page;
3. A check in the amount of \$325.00 to cover the requisite government filing fee for the new application.

Should the check become detached and/or additional fees be required, please charge Deposit Account No. 03-3370.

Very truly yours,



Maria V. Fry  
Legal Assistant

Enclosures

RECEIVED  
JUN 11 2002  
U.S. PATENT &  
TRADEMARK OFFICE

**BOX NEW APP/FEE**  
**TRADEMARKS**

Attorney Docket No. 51223-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
APPLICATION FOR TRADEMARK REGISTRATION

MARK:                **UNION & Design**  
APPLICANT:        N.V. SUMATRA TOBACCO TRADING COMPANY  
CLASS:             34

N.V. SUMATRA TOBACCO TRADING COMPANY, a corporation organized under the laws of the country of Indonesia, located and doing business at Jalan Pattimura No. 3, Pematang Siantar, Sumatera Utara, Indonesia, requests registration of the above-identified trademark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 *et. seq.*, as amended) for:

CIGARETTES, KRETEK CIGARETTES, WHITE CIGARETTES, CIGARETTE FILTERS, CIGARS, TOBACCO, RAW TOBACCO, VIRGINIA TOBACCO, CIGARETTE TOBACCO, SNUFF TOBACCO, CHEWING TOBACCO, CUT OF CLOVE, CORNHUSK TOBACCO, SMOKERS' ARTICLES; CIGARETTE PIPES, CIGARETTE PAPERS, TOBACCO POUCHES, ASHTRAYS, MATCHES AND LIGHTERS in International Class 34.

Applicant has a *bona fide* intention to use the mark in commerce on or in connection with the above-identified goods (15 U.S.C. § 1051(b), as amended).

In accordance with 15 U.S.C. § 1126(d), as amended, Applicant has a *bona fide* intent to use the mark in connection with the above identified goods and asserts a claim of priority based on its Indonesian Application, Serial Number D00 2002 09771 09876, for the mark filed on May 16, 2002.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of applicant; he/she believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. § 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form or in such near resemblance thereto as may be likely when applied to the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his/her knowledge are true and all statements made on information and belief are believed to be true.

POWER OF ATTORNEY

Applicant hereby appoints Pamela T. Church, Philippe Bennett, Robert E. Hanlon, Walter Scott, Lara A. Holzman and Donna Corby Sobel, all members of the Bar of the State of New York, Cathy J. Futrowsky, Reg. No. 37,172, a member of the Bars of Massachusetts, Florida and the District of Columbia, and Lisa W. Rosaya, a member of the Bars of New Jersey and the District of Columbia, all of the firm Coudert Brothers LLP, 1627 I Street, N.W., Washington,

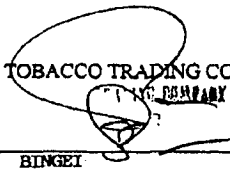
D.C. 20006-4007, phone 202/775-5100, and its attorneys, to prosecute this application for registration, to transact all business in the United States Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration. Please direct all correspondence and communications to Cathy J. Futrowsky, Esq. at 202/736-1847 or Lisa W. Rosaya, Esq. at 202/736-1817.

APPOINTMENT OF DOMESTIC REPRESENTATIVE

Applicant hereby designates Pamela T. Church, Philippe Bennett, Robert E. Hanlon, Walter Scott, Lara A. Holzman, Donna Corby Sobel, Cathy J. Futrowsky, and Lisa W. Rosaya, all of the firm Conder Brothers LLP, having an address of 1627 I Street, NW, Washington, D.C. 20006-4007, phone 202/775-5100, and its attorneys, its domestic representative upon whom all notices or process in proceedings affecting the above referenced application may be served.

N.V. SUMATRA TOBACCO TRADING COMPANY

Date: 24 May, 2002

By:   
Name: TIMIN BINGER  
Title: Director

## **EXHIBIT 8**



## Statement of Use Filing

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	78066805
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 115
<b>NOTICE OF ALLOWANCE</b>	YES
<b>EXTENSION OF USE</b>	NO
<b>MARK SECTION</b>	
<b>MARK</b>	UNION
<b>OWNER SECTION (no change)</b>	
<b>ATTORNEY SECTION</b>	
<b>NAME</b>	Robert C. Kain, Jr.
<b>DOCKET NUMBER</b>	6182-23
<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	034
<b>KEEP EXISTING GOODS AND/OR SERVICES</b>	YES
<b>FIRST USE ANYWHERE DATE</b>	02/04/2005
<b>FIRST USE IN COMMERCE DATE</b>	02/04/2005
<b>SPECIMEN FILE NAME(S)</b>	<u>\\TICRS\EXPORT1\IMAGEOUT</u> <u>11\780668\78066805\xml2\ SOU0002.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	package for the goods
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>SUBTOTAL AMOUNT</b>	100
<b>TOTAL AMOUNT</b>	100
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/rck/

**SIGNATORY NAME** Robert C. Kain, Jr.

**SIGNATORY DATE** 02/07/2005

**SIGNATORY POSITION** Attorney

**FILING INFORMATION**

**SUBMIT DATE** Mon Feb 07 09:46:04 EST 2005

**TEAS STAMP** USPTO/SOU-172.30.230.5-20  
050207094604059009-780668  
05-20045c4e480407c5fbf159  
4ceb8a6864f4-RAM-1116-200  
50207094431389031

**Trademark/Service Mark Statement of Use  
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

**MARK: UNION**

**SERIAL NUMBER: 78066805**

This Allegation of Use is being filed after a Notice of Allowance has issued.

The applicant, Maryjane Cigarette Co., Inc., residing at 2315 N.W. 107th Avenue, B-15, Box 66 , Miami, FL US 33172, is using or is using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class: 034, the applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 02/04/2005, and first used in commerce at least as early as 02/04/2005, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) package for the goods.  
Specimen-1

The applicant hereby appoints Robert C. Kain, Jr. to submit this Statement of Use Filing on behalf of the applicant. The attorney docket/reference number is 6182-23.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

**Declaration**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /rck/      Date: 02/07/2005

Signatory's Name: Robert C. Kain, Jr.  
Signatory's Position: Attorney

RAM Sale Number: 1116  
RAM Accounting Date: 02/07/2005

Serial Number: 78066805  
Internet Transmission Date: Mon Feb 07 09:46:04 EST 2005  
TEAS Stamp: USPTO/SOU-172.30.230.5-20050207094604059  
009-78066805-20045c4e480407c5fbf1594ceb8  
a6864f4-RAM-1116-20050207094431389031

LIMITED RANGE  
SALES  
PROHIBITED



20  
CIGARETTES

**NOINA**

SPECIAL BLEND

**UNION**

*Menthol Kings*

*Menthol Kings*

**NOINA**

*Menthol Kings*

**UNION**

UNION  
MADE IN THE U.S.A.  
1-800-234-5678  
394261000181

SURGEON GENERAL'S WARNING:  
Quitting Smoking Now Greatly Reduces  
Serious Risks to Your Health.

**FEE RECORD SHEET****Serial Number:** 78066805**RAM Sale Number:** 1116**Total Fees:** \$100**RAM Accounting Date:** 20050207

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20050207	\$100	1	\$100

**Transaction Date:** 20050207

## **EXHIBIT 9**

U.S. Patent and Trademark Office (PTO)  
**NOTICE OF ALLOWANCE**

(NOTE: If any data on this notice is incorrect, please submit a written request for correction of the NOA to: Assistant Commissioner for Trademarks, Box ITU, 2900 Crystal Drive, Arlington, VA 22202-3513. Please include the serial number of your application on ALL correspondence with the PTO. 15 U.S.C. 1063(b)(2))

ISSUE DATE OF NOA: Feb 19, 2002

Robert C. Kain, Jr.  
 FLEIT KAIN GIBBONS GUTMAN & BONGINI P L  
 750 SE 3RD AVE STE 100  
 FORT LAUDERDALE FL 33316-1153

ATTORNEY  
 REFERENCE NUMBER  
 6182-23

**\*\* IMPORTANT INFORMATION: 6 MONTH DEADLINE \*\***

To avoid ABANDONMENT of this application, either a "Statement of Use" (a.k.a. "Allegation of Use") or a "Request for Extension of Time to File a Statement of Use" (a.k.a. "Extension Request") and the appropriate fee(s) must be received in the PTO within six months of the issue date of this Notice of Allowance (NOA) for those goods and/or services based on intent to use. Failure to do so will result in the ABANDONMENT of this application.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements, including fees. These requirements are explained in the PTO booklet "Basic Facts About Trademarks", which can be obtained upon request at (703)305-9000. In addition, there are printed forms contained in this booklet (for "Statements of Use" and "Extension Requests") for your use.

The following information should be reviewed for accuracy:

SERIAL NUMBER: 78/066805  
 MARK: UNION  
 OWNER: Maryjane Cigarette Co., Inc.  
 2315 N.W. 107th Avenue, B-15, Box 66  
 Miami, FLORIDA 33172

This application has the following bases, but not necessarily for all listed goods/services:  
 Section 1(a): NO      Section 1(b): YES      Section 44(e): NO

**GOODS/SERVICES BY INTERNATIONAL CLASS**

034-cigarettes

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



## **EXHIBIT 10**

listed marks, but Applicant rejected this offer and MJC pursued the manufacturing and distribution on its own.

**INTERROGATORY NO.4**

Identify with particularity all goods and/or services offered and sold by Opposer in commerce in the United States using the term UNION.

**Response:** Cigarettes

**INTERROGATORY NO.5**

Identify with particularity when Opposer made first use of the mark UNION in the United States and describe the circumstances of that first use in the United States.

**Response:** In late 1999, ACC's predecessor in interest, Mary Jane Cigarettes Co., Inc. (herein "MJC") was formed. MJC contracted with a third party manufacturer, "Prime Movers" to make the first run of UNION branded cigarettes in 2003. That contract was not completed and MJC found a new manufacturer, Falcon of America, LLC, to make the first commercial production run of the UNION branded cigarettes. Falcon produced a few hundred cartons of UNION branded cigarettes sometime near the end of 2004. On February 3, 2005, MJC delivered to F.T.S. Distributors C.D.A, one of its cigarette distributors, UNION branded cigarettes. ACC was created on or about November 29, 2004. In 2005, ACC and MJC decided that ACC would take over the UNION brand and manufacture and sell the UNION cigarettes. ACC Exh. 023, 024. ACC was preparing to open and launch its manufacturing plant in January-March, 2009. UNION cigarette production was scheduled for the first week in March 2005. The first

commercial use of the mark was February 4, 2005 (see Statement of Use filed February 5, 2005 (ACC Exh. 022), see also invoice no. 35 to FTS Distributors, ACC Exh. 20). Unfortunately certain unforeseen events intervened which delayed further commercial production. First, Florida Power and Light Co., which is responsible for providing electrical power to ACC's manufacturing plant, indicated to ACC that ACC would need to spend additional money and time to install a power booster at ACC's location in order to handle the electrical demand of the cigarette manufacturing machines. This caused a delay of approximately two (2) months. At this time, ACC's sales agents were distributing UNION cigarettes to selected retailers. Further delays were caused by late delivery of certain cigarette manufacturing and/or labeling equipment. Then, ACC's Florida plant was closed for a four week and then a two week period due to power outages caused by Hurricane Katrina in August 2005 and Hurricane Wilma in October 2005. This caused additional month long delays in reaching full UNION production. MJC assigned the UNION mark and the associated good will to ACC on May 15, 2005. See Reel/frame 003542/0087 in the Patent and Trademark Office Assignment Records, ACC Exh. 023, 024. ACC continues to sell UNION cigarettes. See ACC Exh. 008, ACC Exh. 019, ACC Exh. 020, ACC Exh. 021.

**Supplemental Response:** With respect to the few hundred cartons of UNION cigarettes manufactured by Falcon, MJC shipped many cartons of UNION cigarettes to distributors and retailers in and out of the State of Florida, including the shipment to F.T.S. Distributors C.D.A. on February 3, 2005, who shipped Union cigarettes to F.T.S> Distributors California. See ACC-000068. These early shipments to distributors and retailers is a regular and customary practice of MJC and now ACC when it begins selling a new brand of cigarettes.

## **EXHIBIT 11**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

---

**OPPOSER'S REPLY TO APPLICANT'S THIRD SET OF**

**INTERROGATORIES NOS 23 - 24**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) Third Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the interrogatories purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the U.S. Patent and Trademark Office Trademark Rules of Practice.

2. Opposer objects to the extent the interrogatories neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the interrogatories are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the interrogatories are duplicative.

5. Opposer objects to the extent the interrogatories seek information not within Opposer's knowledge.

6. Opposer objects to the extent the interrogatories seek information that Applicant already possesses.

7. Opposer objects to the extent the interrogatories seek information that is publicly available.

8. Opposer objects to the extent the interrogatories seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the interrogatories seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Opposer objects to the extent that Applicant exceeds the number of permissible Interrogatory requests as detailed in Fed. R. Civ. P. 33(a)(1).

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

RESPONSES AND OBJECTIONS TO SPECIFIC INTERROGATORIES

**INTERROGATORY NO. 23**

Identify each and every retailer and/or distributor to whom Opposer sent a sample shipment of UNION cigarettes prior to February 4, 2005, including the method of delivery and the individual responsible for the delivery.

**Response:** When Opposer received samples of Union Cigarettes that were manufactured by Falcon, they were received with all taxes paid, Opposer and Opposer's staff proceeded to send them to any and all potential customers in the US and beyond. Many customers picked up their orders and or ordered on a daily basis. Samples often accompanied these orders. Opposer was not required to account for these samples and therefore did not. Currently Opposer does account for samples as the manufacturer as per request from the TTB in 2007. Otherwise please see documents attached to the responses for the Third Request for Production for the lists requested.

This answer supplements the answers to Interrogatory Nos. 5, 19 and 20.

**INTERROGATORY NO. 24**

Identify each and every retailer and/or distributor to whom Opposer sent a sample shipment of UNION cigarettes during the February 4, 2005 to August 23, 2005 time period, including the method of delivery and the individual responsible for the delivery.

**Response:** When Opposer received samples of Union Cigarettes that were manufactured by Falcon, they were received with all taxes paid. Opposer and Opposer's staff proceeded to send them to any and all potential and ongoing customers in the US and beyond. Many customers picked up their orders and or ordered on a daily basis. Samples often accompanied these orders. Opposer was not required to account for these samples and therefore did not. Currently Opposer does account for samples as the manufacturer as per request from the ITB in 2007. Otherwise please see documents attached to the responses for the Third Request for Production for the lists requested.

This answer supplements the answers to Interrogatory Nos. 5, 19 and 20.

[space left blank]



I, Basil Battah, president of American Cigarette Co. (Opposer), hereby affirm that the foregoing answers to these interrogatories are true to the best of my knowledge.

\_\_\_\_\_  
Basil Battah

As to objections:

Dated: July 30, 2010

Respectfully Submitted:

Robert Kain/  
Robert C. Kain, Jr.  
Fla. Bar. 266760  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
750 Southeast Third Avenue, Suite 100  
Ft. Lauderdale, Florida 33316  
Phone: 954-768-9002  
Fax: 954-768-0158  
[rkain@ComplexIP.com](mailto:rkain@ComplexIP.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 30 day of 2010, a true copy of the foregoing Opposer's Reply to Third Set of Interrogatories was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643

Robert Kain/  
Robert C. Kain, Jr.

I, Basil Battah, president of American Cigarette Co. (Opposer), hereby affirm that the foregoing answers to these interrogatories are true to the best of my knowledge.

  
Basil Battah

As to objections:

Dated: July 30, 2010

Respectfully Submitted:

/RobertKain/  
Robert C. Kain, Jr.  
Fla. Bar. 266760  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
750 Southeast Third Avenue, Suite 100  
Ft. Lauderdale, Florida 33316  
Phone: 954-768-9002  
Fax: 954-768-0158  
[rkain@ComplexIP.com](mailto:rkain@ComplexIP.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 30 day of July 2010, a true copy of the foregoing Opposer's Reply to Third Set of Interrogatories was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
301 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643

/RobertKain/  
Robert C. Kain, Jr.

## **EXHIBIT 12**

14. A sale of a pack of cigarettes to a consumer in a package as reflected in the specimen with Opposer's Statement of Use filed February 7, 2005 in Application Serial No. 78/066,805 would not have been in compliance with the Fair Packaging and Labeling Act.

Response: Objection; Calls for a legal conclusion

Supplemental Response: At the time of packaging and sale Opposer believed the cigarettes complied with the Fair Packaging and Labeling Act.

15. Opposer's final deadline for submitting a Statement of Use for Application Serial No. 78/066,805 was February 19, 2005.

Response: Admitted

16. Opposer's Application Serial No. 78/066,805 would have been abandoned if a Statement of Use was not filed on or before February 19, 2005.

Response: Admitted

17. The shipment of the carton referred to in Opposer's Invoice #35, ACC-000069 was the basis for the Statement of Use filed by Opposer in Application Ser. No. 78/066,805 on February 7, 2005.

Response: Denied

Supplemental Response: Denied, ACC sent out many samples for sale to commercially promote the UNION cigarette brand at that time, which included Invoice #35.

18. Opposer had made no other shipment or sale of cigarettes under the UNION trademark in commerce prior to February 3, 2005.

Response: Admitted

19. Opposer made no other shipment or sale of cigarettes under the UNION trademark in commerce between February 3, 2005 and February 19, 2005, beyond that reflected in Opposer's Invoice #35, ACC-000069.

Response: Denied

20. Opposer made no shipment or sale of cigarettes under the UNION trademark in commerce between February 19, 2005 and October 18, 2005.

Response: Denied

21. Opposer has no record of a shipment in commerce at any time of a quantity of one (1) carton or less of cigarettes under the UNION trademark other than Opposer's Invoice #35, ACC-000069.

Response: Denied

22. Opposer has no record of a shipment in commerce at any time of a quantity of one (1) carton or less of cigarettes under any brand other than Opposer's Invoice #35, ACC000069.

Response: Denied

23. F.T.S. Distributors C.D.A. and F.T.S. Distributors California are commonly owned.

Response: Denied

24. F.T.S. Distributors C.D.A. and F.T.S. Distributors California share common owners.

Response: Denied

25. F.T.S. Distributors C.D.A. and F.T.S. Distributors California have common shareholders.

Response: Denied

26. F.T.S. Distributors C.D.A. and F.T.S. Distributors California have common investors.

Response: Denied

## **EXHIBIT 13**

# **CONFIDENTIAL DOCUMENT**

## **EXHIBIT 14**



**CONFIDENTIAL DOCUMENT**

## **EXHIBIT 15**

**CONFIDENTIAL DOCUMENT**

## **EXHIBIT 16**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

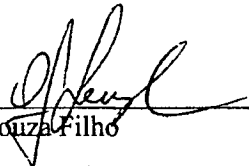
AMERICAN CIGARETTE COMPANY INC.	:	
Opposer, Respondent	:	
v.	:	Opposition No. 91185261 Cancellation No. 92052621 (consolidated)
N.V. SUMATRA TOBACCO TRADING CO.,	:	
Applicant, Petitioner	:	

**AFFIDAVIT OF OSMAR J. SOUZA FILHO**

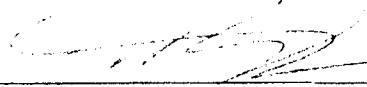
Osmar J. Souza Filho hereby states and declares as follows:

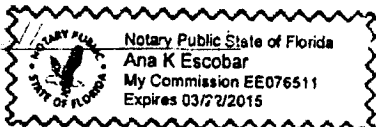
1. I am over the age of 18 and a resident of the State of Florida.
2. I was the Managing Member of Falcon of America, LLC from the company's formation on May 6, 2003.
3. On August 12, 2004, Falcon of America, LLC entered into a letter of intent with FTS Distributors, a Florida-based entity owned and operated by Mr. Basil Battah, for the manufacture of UNION and other branded cigarettes by Falcon of America, LLC for distribution by FTS Distributors (the "Letter of Intent"). A copy of the Letter of Intent is attached hereto as Enclosure A.
4. Effective on October 5, 2004, Falcon of America, LLC signed an exclusive agreement with United American Tobacco LLC ("UAT"), another Florida-based entity owned and operated by Mr. Battah, for the manufacture of UNION branded cigarettes by Falcon of America, LLC for distribution by UAT (the "Falcon Agreement"). A copy of the Falcon Agreement is attached hereto as Enclosure B.

The affiant says nothing more.

  
\_\_\_\_\_  
Osmar J. Souza Filho  
Nov 10 2011  
\_\_\_\_\_  
Date

I, Ana Escobar, a notary public in the State of Florida hereby affirm that Osmar J. Souza Filho personally appeared before me and, after providing appropriate identification and being duly sworn, executed the foregoing Affidavit.

  
\_\_\_\_\_  
11/10/2011  
Date



## **EXHIBIT 17**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

Opposition Nos. 91185261  
91186841  
Cancellation No. 92052621

---

**RESPONDENT'S REPLY TO PETITIONER'S FIRST REQUEST FOR PRODUCTION**

**OF DOCUMENTS AND THINGS**

Pursuant to Rules 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent, AMERICAN CIGARETTE COMPANY, INC. (herein Respondent), hereby responds and objects to Petitioner, N.V. Sumatra Tobacco Trading Company's (herein Petitioner) First Request for Production of Documents.

**GENERAL OBJECTIONS**

1. Respondent objects to the extent the requests for production purport to impose obligations on Petitioner beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Respondent objects to the extent the requests for production neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.



3. Respondent objects to the extent the requests for production are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Respondent objects to the extent the requests for production are duplicative.

5. Respondent objects to the extent the requests for production seek information not within Respondent's knowledge.

6. Respondent objects to the extent the requests for production seek information that Petitioner already possesses.

7. Respondent objects to the extent the requests for production seek information that is publicly available.

8. Respondent objects to the extent the requests for production seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Respondent will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Respondent objects to the extent the requests for production seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Respondent will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the requests for production as a

present employee of Respondent may be contacted through Respondent's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Respondent does not concede the relevance or admissibility of any information herein. Respondent reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Respondent asserts their responses and objections on the basis of information now reasonably available to them. Respondent reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

(1) All documents and things which reflect, refer to, relate to or concern the submission of a warning label plan to the Federal Trade Commission ("FTC") for the UNION brand in accordance with 15 U.S.C. 1331 et seq, for the years 2004 and 2005.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states Falcon was the original manufacturer who made the first samples in 2004 and would have been responsible for warning labels. As such, no documents are in the possession and control of Respondent relative to 2004. The documents sought relative to 2005 are not in the possession and control of Respondent as this information was submitted by ACC's attorney at the time. Since discovery remains ongoing, Respondent will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

) (2) All documents and things which reflect, refer to, relate to or concern the FTC's approval of a warning label plan for the UNION brand in accordance with 15 U.S.C. 1331 et seq, for the years 2004 and 2005.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent restates the information provided in Request No.1. Further Respondent produces an October 21, 2005 letter from the FTC where a rotation plan is granted, and which may have already been provided in document production requests relative to the opposition. (Bates Pg. 4079-4080). Since discovery remains ongoing, Respondent will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

) (3) All documents and things, other than the Falcon Agreement (ACC\_000698 thru ACC\_000728) which reflect, refer to, relate to or concern the "preliminary paperwork and preparations in the factory" generated in response to the August 12, 2004 letter from FTS Distributors to Falcon of America LLC ("Falcon") produced in connection with the consolidated proceedings as ACC\_000690-691, hereafter referred to as the "Falcon Letter Agreement."

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that all Falcon documents in the possession and control of Respondent were already produced. Since discovery remains

ongoing, Respondent will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(4) All document and things, which reflect, refer to, relate to or concern invoices for UNION cigarettes manufactured by Falcon under the Falcon Agreement.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that all invoices have already been produced in prior document production responses relative to the Opposition. Since discovery remains ongoing, Respondent will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(5) All document and things, other than the Falcon Agreement which reflect, refer to, relate to or concern bills of lading for UNION cigarettes manufactured by Falcon under the Falcon Agreement.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none exist as, they were picked up in person by Basil Battah.

## **EXHIBIT 18**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

---

**OPPOSER'S REPLY TO APPLICANT'S FOURTH REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Pursuant to Rules 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) FOURTH Request for Production of Documents.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the requests for production purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Opposer objects to the extent the requests for production neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the requests for production are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the requests for production are duplicative.

5. Opposer objects to the extent the requests for production seek information not within Opposer's knowledge.

6. Opposer objects to the extent the requests for production seek information that Applicant already possesses.

7. Opposer objects to the extent the requests for production seek information that is publicly available.

8. Opposer objects to the extent the requests for production seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the requests for production seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Opposer will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the requests for production as a

present employee of Opposer may be contacted through Opposer's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

(52) Produce any and all documents supporting Opposer' "regular and customary practice" of sending early shipments of cigarettes to distributors and retailers, as identified in Opposer's Supplemental Response to Interrogatory No.5, prior to February 4, 2005.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it produces customer list documents responsive to this Request. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.



RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(64) Produce any and all documents related to any purchase orders issued by Opposer to Falcon of America LLC for UNION branded cigarettes.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(65) Produce any and all documents related to any purchase orders issued by United American Tobacco LLC to Falcon of America LLC for UNION branded cigarettes.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(66) Produce any and all documents identifying the product specifications for UNION cigarettes manufactured by Falcon of America LLC for Opposer referenced as Annex 3 to the Agreement between United American Tobacco LLC and Falcon of America LLC produced as ACC\_000699 - ACC\_000728.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(67) Produce any and all documents identifying the product specifications for UNION cigarettes manufactured by Falcon of America LLC for United American Tobacco referenced as Annex 3 to the Agreement between United American Tobacco LLC and Falcon of Amedca LLC produced as ACC\_000699 - ACC\_000728.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(68) Produce any and all documents identifying any shipment of UNION branded cigarettes from Falcon of American LLC to Opposer during the calendar 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist. Additionally see answers to third set of interrogatories.

(69) Produce any and all documents identifying any shipment of UNION branded cigarettes from Falcon of America LLC to United American Tobacco LLC during the calendar 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(70) Produce any and all documents identifying any payment by Opposer to Falcon of America LLC for UNION branded cigarettes shipped during the calendar 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this

proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(71) Produce any and all documents identifying any payment by United American Tobacco LLC to Falcon of America LLC for UNION branded cigarettes shipped during the calendar 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(72) Produce any and all documents supporting certification from the U.S. Department of Health and Human Services for the manufacture of UNION branded cigarettes as required under the Cigarette and Labeling Act for cigarettes shipped prior to February 4, 2005.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request,

## **EXHIBIT 19**

**CONFIDENTIAL DOCUMENT**

## **EXHIBIT 20**

# **CONFIDENTIAL DOCUMENT**



## **EXHIBIT 21**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76-415,303 and 76-415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

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**OPPOSER'S REPLY TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Pursuant to Rules 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) First Request for Production of Documents.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the requests for production purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Opposer objects to the extent the requests for production neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the requests for production are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the requests for production are duplicative.

5. Opposer objects to the extent the requests for production seek information not within Opposer's knowledge.

6. Opposer objects to the extent the requests for production seek information that Applicant already possesses.

7. Opposer objects to the extent the requests for production seek information that is publicly available.

8. Opposer objects to the extent the requests for production seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the requests for production seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Opposer will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the requests for production as a

present employee of Opposer may be contacted through Opposer's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

**Request: (1)** All documents and things which reflect, refer to, relate to or concern the conception, selection, adoption and the first use in the United States, if any, of the designation UNION in connection with the products and services of Opposer.

**Response:** See Exh. 19, 17

**Request: (2)** Representative documents and things which reflect, refer to, relate to, evidence or concern the consumer understanding, recognition, acceptance of, reaction to, the trademark availability of or the protectability of any mark or designation consisting of the term UNION.

**Response:** See Exh. 17.

**Request: (3)** Representative documents and things which reflect the continuity of use made by Opposer of the designation UNION in the United States from its first use to the present.

information given in response to Applicant's Interrogatory No.5.

**Response:** See Exh. 19.

**Request: (9)** All documents and things which reflect, refer to, relate to or concern any information given in response to Applicant's Interrogatory No.6.

**Response:** Objection. Repetitive. Otherwise, see responsive documents from answer 6 above. (See Exh. 1-4, 9-16)

**Request: (10)** Representative documents and things which reflect, refer to, relate to or concern any and all trade shows, professional shows, professional meetings, seminars and conventions where Opposer, or another on Opposer's behalf, has promoted or offered for sale any products or services in connection with which the term UNION was used.

**Response:** None

**Request: (11)** To the extent not produced in response to an earlier request, representative documents identifying the employees or representatives of Opposer who were present at any trade shows, professional shows, professional meetings, seminars and conventions identified in the documents responsive to Request No. 10.

**Response:** None

**Request: (12)** Representative documents sufficient to show, by year, the dollar volume of sales in the United States of products and services by Opposer, or on behalf of Opposer, offered under the designation UNION.

**Response:** See financials previously provided in initial disclosures under attorneys eyes only. See Exh. 8. See also Exh. 21 showing total sales by carton and dollar amount from January 2005 through April 2009.

## **EXHIBIT 22**

(6) All documents and things which reflect, refer to, relate to or evidence purchase orders for finalized labels and/or coating ordered from Florida Packaging and Graphics in connection with the UNION brand cigarettes during the 2004 and 2005 time period.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent.

(7) All documents and things which reflect, refer to, relate to or evidence invoices for finalized labels and/or coating ordered from Florida Packaging and Graphics in connection with the UNION brand cigarettes during the 2004 and 2005 time period.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that.

(8) All documents and things which reflect, refer to, relate to or evidence the delivery of finalized labels and/or coating ordered from Florida Packaging and Graphics in connection with the UNION brand cigarettes during the 2004 and 2005 time period.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in

this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. However, ACC states that Falcon had the packaging made by Super Color, 3700 N. 29<sup>th</sup> Ave., Hollywood, FL 33020.

(9) All documents and things which reflect, refer to, relate to or evidence a cigarette monthly report detail for UNION cigarettes prior to August 2005.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. Furthermore, ACC does not retain documents more than 5 years old.

(10) All documents and things which reflect, refer to, relate to or concern the termination of the agreement between American Automotive Security Products d/b/a FTS Distributors and Prime Movers produced in connection with the consolidated proceedings as ACC\_000730 thru ACC\_000756, hereafter referred to as "the Prime Movers Agreement."

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the



## **EXHIBIT 23**

**CONFIDENTIAL DOCUMENT**

## **EXHIBIT 24**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

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**OPPOSER'S REPLY TO APPLICANT'S THIRD REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Pursuant to Rules 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) THIRD Request for Production of Documents.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the requests for production purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Opposer objects to the extent the requests for production neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the requests for production are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the requests for production are duplicative.

5. Opposer objects to the extent the requests for production seek information not within Opposer's knowledge.

6. Opposer objects to the extent the requests for production seek information that Applicant already possesses.

7. Opposer objects to the extent the requests for production seek information that is publicly available.

8. Opposer objects to the extent the requests for production seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the requests for production seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Opposer will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the requests for production as a

present employee of Opposer may be contacted through Opposer's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

(42) Produce all documents supporting the basis for the denial of Applicant's Request for Admission No.8. If Opposer claims that documents have already been produced, identify, by specific Bates numbers, the responsive documents.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(43) Produce all documents supporting the basis for the denial of Applicant's Request for Admission No.9. If Opposer claims that documents have already been produced, identify, by specific Bates numbers, the responsive documents.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible

evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(44) Produce all documents supporting the basis for the denial of Applicant's Request for Admission No. 17. If Opposer claims that documents have already been produced, identify, by specific Bates numbers, the responsive documents.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Otherwise, Opposer has produced the documents and Applicant's request No. 17 identifies the document.

(45) Produce all documents reflecting and related to the use relied upon in the Statement of Use filed by Opposer in Application Ser. No. 78/066,805 on February 7, 2005. To the extent, Opposer claims that documents have already been produced in response to this request, identify, by Bates numbers, the responsive documents.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no additional documents responsive to this Request.

(46) Produce all documents supporting the basis for the denial of Applicant's Request for Admission No. 19. If Opposer claims that documents have already been produced, identify, by specific Bates numbers, the responsive documents.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this

) proceeding. Subject to the foregoing objections, Opposer states that it has no additional documents responsive to this Request. Otherwise, Opposer has produced the documents and Applicant's request No. 17 identifies the document.

(47) Produce all documents relating to the shipment or sale of cigarettes under the UNION mark by Opposer in commerce from February 4, 2005 to August 22, 2005. To the extent, Opposer claims that all such documents have already been produced in response to earlier requests, identify, by Bates numbers, the responsive documents.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no additional documents responsive to this Request.

) (48) To the extent not produced in response to Applicant's Document Request Nos. 44 through 47 above, produce all documents reflecting and relating to any invoices or shipping records issued for Opposer's UNION branded cigarettes sold or transported between February 4, 2005 and August 22, 2005.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer Provides its shipping records for cigarettes and samples.

(49) Produce all documents supporting Opposer's shipment, in the ordinary course of trade, of a single carton or less of cigarettes to a distributor where such shipment was not labeled



"sample." To the extent Opposer claims that all such documents have already been produced in response to this request, identify, by Bates numbers, the documents in question.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has produced all documents in its possession and directs Applicant to response 48 herein.

(50) Produce all documents supporting Opposer's shipment, in the ordinary course of trade, of a single carton or less of UNION branded cigarettes to a distributor where such shipment was not labeled "sample." To the extent Opposer claims that all such documents have already been produced in response to this request, identify, by Bates numbers, the documents in question.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has produced all documents in its possession and directs Applicant to response 48 herein.

(51) Produce all documents relating to the receipt of payment for the shipment of the cigarettes identified in Opposer's Invoice #35, ACC-000069.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has produced all documents in its possession and directs Applicant to response 48 herein.

(52) Produce all documents related to the "unforeseen events ... which delayed commercial production" of the cigarettes sold under the UNION brand, as identified in Opposer's Response to Applicant's Interrogatory No.5, during the February 2005 to August 2005 time period.

RESPONSE: Opposer objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no additional documents responsive to this Request.

Dated: \_\_February 19\_\_, 2010\_\_

Respectfully Submitted:

s/Robert C. Kain/\_\_\_\_\_  
Robert C. Kain, Jr.  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
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[rkain@ComplexIP.com](mailto:rkain@ComplexIP.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this \_\_19\_\_ day of \_\_February\_\_ 2010, a true copy of the foregoing Opposer's Reply to Applicant's Third Request for Production was served via email to the following:

Tara Vold (tvold@fulbright.com)

J. Paul Williamson

Fulbright & Jaworski L.L.P.

801 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

\_\_\_\_s/RCK/\_\_\_\_\_  
Robert C. Kain, Jr.

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## **EXHIBIT 25**

(53) Produce any and all documents supporting Opposer's regular and customary practice of sending early shipments of cigarettes to distributors and retailers during the February 4, 2005 to August 23, 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it produces customer list documents responsive to this Request. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(54) Produce any and all documents supporting Opposer's assertion in Supplemental Response to Interrogatory No.5 that "MJC shipped many cartons of UNION cigarettes to distributors and retailers in and out of the State of Florida prior to February 4, 2005." If Opposer claims such documents have been produced identify such documents by specific bates numbers.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it produces customer list documents responsive to this Request. Since discovery remains ongoing, Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(55) Produce any and all documents supporting Opposer's shipment of UNION cigarettes to distributors and retailers in and out of the State of Florida prior from February 5, 2005 to

August 23, 2005. If Opposer claims such documents have been produced identify such documents by specific bates numbers.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request

(56) Produce any and all documents related to feedback received by Opposer from retailers or distributors in response to any shipments of sample UNION cigarettes sent prior to February 4, 2005.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(57) Produce any and all documents related to any feedback received by Opposer from retailers or distributors in response to any shipments of sample UNION cigarettes during the February 4,2005 to August 23,2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(58) Produce any and all documents related to any feedback received by Opposer from any consumers in response to any shipments of sample UNION cigarettes prior to February 4, 2005.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(59) Produce all documents related to any feedback received by Opposer from any consumers in response to any shipments of sample UNION cigarettes during the to February 4, 2005 to August 23,2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(60) Produce any and all documents accompanying the shipment of a carton of UNION cigarettes referred to in Opposer's Invoice #35, ACC-000069.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing,

## **EXHIBIT 26**

this proceeding. Respondent further states that ACC has no idea what Falcon did in 2004. In 2005 ACC had their attorney file for the rotation plan, which included providing the flat packs and cartons to him for submission to the FTC.

**INTERROGATORY NO. 5**

Explain in detail the basis for the \$7.00 charge referenced in Invoice #35, produced in discovery in connection with the consolidated proceedings as ACC-000069.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states that this represents the tax plus the cost of manufacturing. This is the price agreed to between FTS California (not owned by Battah) and FTS Distributors, which included the cost of freight.

**INTERROGATORY NO.6**

Identify with particularity all "distributors and retailers in and out of the state of Florida" to whom samples of the UNION cigarettes were shipped prior to August 2005, as identified in Opposer's Supplemental Response to Applicant's Interrogatory No.5.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further objects that this request is overly burdensome and broad. Respondent further states that such information is specifically not in the possession or control of Respondent. Notwithstanding the foregoing, Respondent notes that many of these distributors



## **EXHIBIT 27**

TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

---

**OPPOSER'S SUPPLEMENTAL REPLY TO APPLICANT'S SECOND SET OF**  
**INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) Second Set of Interrogatories.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the interrogatories purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the U.S. Patent and Trademark Office Trademark Rules of Practice.

2. Opposer objects to the extent the interrogatories neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the interrogatories are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the interrogatories are duplicative.

5. Opposer objects to the extent the interrogatories seek information not within Opposer's knowledge.

6. Opposer objects to the extent the interrogatories seek information that Applicant already possesses.

7. Opposer objects to the extent the interrogatories seek information that is publicly available.

8. Opposer objects to the extent the interrogatories seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the interrogatories seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Opposer objects to the extent that Applicant exceeds the number of permissible Interrogatory requests as detailed in Fed. R. Civ. P. 33(a)(1).

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

#### RESPONSES AND OBJECTIONS TO SPECIFIC INTERROGATORIES

##### **INTERROGATORY NO. 19**

With respect to the carton referred to in Opposer's Invoice #35, ACC-000069, describe the following:

a) How was the carton shipped and by what shipper.

**Response:** The carton was shipped via Federal Express.

b) How was the invoice paid and when.

**Response:** ACC does not recall, nor have any readily available document which shows the manner in which the invoice was paid.

c) What did F.T.S. Distributors California do with the carton after receipt.

**Response:** Unknown, but Opposer believes that F.T.S. Distributors California used that Union goods in an ordinary and customary manner.

d) Whether any instructions were transmitted by F.T.S. Distributors C.D.A. to F.T.S. Distributors California, either with the carton or separately, regarding how F.T.S. Distributors California was to handle or dispose of that carton.

**Response:** Objection, this question exceeds the number of permissible interrogatory requests by Applicant. See Rule 33(a)(1).

**Supplemental Response:** No instructions were provided.

**INTERROGATORY NO. 20**

Explain in detail why February 4, 2005 was used as the date of first use in commerce in the Statement of Use of February 7, 2005 in Application Ser. No. 78/066,805 when Opposer's Invoice #35, ACC-000069 reflects a ship date of February 3, 2005.

**Response:** Objection, this question exceeds the number of permissible interrogatory requests by Applicant. See Rule 33(a)(1).

**Supplemental Response:** The customer didn't get the order until the day after February 3<sup>rd</sup>, which was February 4<sup>th</sup>.

**INTERROGATORY NO. 21**

Identify the person or persons who designed the graphics and developed the text for the packaging, both carton and pack, used for the carton of cigarettes referenced in Opposer's Invoice #35, ACC-000069.

**Response:** Objection, this question exceeds the number of permissible interrogatory requests by Applicant. See Rule 33(a)(1).

**Supplemental Response:** Jeff Griffin of FTS Distributors and Hugo Zanzi of Zanzi Enterprises, various graphic artists at Supercolor located at 3700 North 29th ave, Suite 202, Hollywood Florida, 33020; 954-964-4656. They were hired by Falcon of America.

**INTERROGATORY NO. 22**

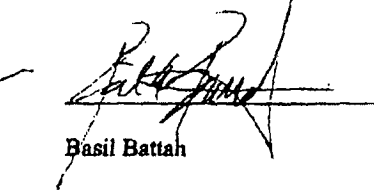
Identify the person or persons at Opposer in February of 2005 responsible for the cigarette packaging for the UNION cigarettes.

**Response:** Objection, this question exceeds the number of permissible interrogatory requests by Applicant. See Rule 33(a)(1).

**Supplemental Response:** The company that made the packaging was a printing company called SuperColor in Hollywood Florida.

[Intentionally left blank]

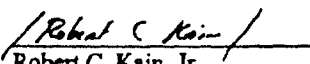
I, Basil Battah, president of American Cigarette Co. (Opposer), hereby affirm that the foregoing Supplemental answers to these interrogatories are true to the best of my knowledge.

  
Basil Battah

As to objections:

Dated: 11/13/2009

Respectfully Submitted:

  
Robert C. Kain, Jr.  
Fla. Bar. 266760  
Darren Spielman  
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[rkain@ComplexIP.com](mailto:rkain@ComplexIP.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13 day of Nov 2009, a true copy of the foregoing Opposer's Supplemental Reply to Applicant's Second Set of Interrogatories was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643

  
Robert C. Kain, Jr

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## **EXHIBIT 28**



TRADEMARKS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/415,303 and 76/415,305  
Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.  
Opposer/Plaintiff,

Opposition Nos. 91185261  
91186841

v.

N.V. Sumatra Tobacco Trading Company  
Applicant/Defendant.

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**OPPOSER'S REPLY TO APPLICANT'S SECOND REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS**

Pursuant to Rules 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, AMERICAN CIGARETTE COMPANY, INC. (herein Opposer), hereby responds and objects to Applicant, N.V. Sumatra Tobacco Trading Company's (herein Applicant) Second Request for Production of Documents.

**GENERAL OBJECTIONS**

1. Opposer objects to the extent the requests for production purport to impose obligations on Applicant beyond the requirements of the Federal Rules of Civil Procedure and the USPTO Trademark Rules of Practice.

2. Opposer objects to the extent the requests for production neither seek information relevant to the claims or defenses in this action nor are reasonably calculated to lead to the discovery of admissible evidence.

3. Opposer objects to the extent the requests for production are vague, overly broad, or unduly burdensome, and to the extent they fail to specify the information sought with reasonable particularity.

4. Opposer objects to the extent the requests for production are duplicative.

5. Opposer objects to the extent the requests for production seek information not within Opposer's knowledge.

6. Opposer objects to the extent the requests for production seek information that Applicant already possesses.

7. Opposer objects to the extent the requests for production seek information that is publicly available.

8. Opposer objects to the extent the requests for production seek information protected by the attorney-client privilege, the work-product protection, or any other applicable privilege, protection, or immunity from discovery ("privileged information"). Opposer will not intentionally disclose privileged information. Any unintentional disclosure of privileged information shall not be deemed a waiver of any privilege or protection associated therewith.

9. Opposer objects to the extent the requests for production seek the disclosure of proprietary, trade-secret, or other commercially sensitive information without adequate assurance that such information will be used solely for the purposes of this litigation, will not be misused, and that its confidentiality will be maintained.

10. Where business addresses and telephone numbers are available, Opposer will not provide home addresses, home telephone numbers, or e-mail addresses for the individuals identified. Furthermore, each individual identified in response to the requests for production as a

present employee of Opposer may be contacted through Opposer's counsel and, as such, no contact information is provided.

11. By asserting these responses and objections, Opposer does not concede the relevance or admissibility of any information herein. Opposer reserves all of their rights to object - in any proceeding, on any and all applicable grounds - to the use of any of these responses and objections or any information provided.

12. Opposer asserts their responses and objections on the basis of information now reasonably available to them. Opposer reserves the right to amend or supplement any portion of their responses and objections.

#### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

(30) Produce a copy of the packaging used in connection with the individual cigarette packs, the cartons and shipping boxes for UNION cigarettes sold or transported in commerce by Opposer in October of 2005.

Response: Not available. A copy of similar packaging used at that time has already been provided.

(31) Produce all documents relating to the cost of the transport of the carton referred to in Opposer's Invoice #35, ACC-000069, from F.T.S. Distributors C.D.A. to F.T.S. Distributors California.

Response: None. Opposer has searched through its records and is unable to locate these documents at this time. Opposer will continue to search for these items and produce them in a timely fashion.

(32) Produce all documents relating to the shipment of the carton referred to in Opposer's Invoice #35, ACC-000069 from F.T.S. Distributors C.D.A. to F.T.S. Distributors California.

Response: Already provided.

(33) If Admission Nos. 1 or 2 is denied, produce all documents supporting the basis for the denial.

Response: Enclosed.

(34) If Admission Nos. 3 or 3a is denied, produce all documents supporting the basis for the denial.

Response: Enclosed.

(35) If Admissions Nos. 21 or 22 is denied, produce all documents supporting the basis for the denial.

Response: Enclosed.

(36) Produce a copy of the carton packaging for the carton of cigarettes sent by F.T.S. Distributions C.D.A. to F.T.S. Distributors California on February 3, 2005 as referred to in Opposer's Invoice #35, ACC-000069.

Response: Not available. A copy of similar packaging used at that time has already been provided.

(37) Produce all document relating to:

(a) the design of the cigarette pack packaging reflected by the specimen submitted by Opposer with its Statement of Use filed February 7, 2005 in Application Ser. No. 78/066,805.

Response: Enclosed.

(b) the design of the carton packaging used for the carton referred to Opposer's Invoice #35, ACC-000069.

Response: Enclosed.

(c) the number of cigarette packs with the specific design reflected by the specimen submitted by Opposer with its Statement of Use filed February 7, 2005 in Application Ser. No. 78/066,805 that were produced or manufactured for Opposer.

Response: Enclosed.

(d) the number of carton packages of the specific design used for the carton referred to in Opposer's Invoice #35, ACC-000069 that were produced or manufactured for Opposer.

Response: Enclosed.

(e) the use and/or destruction of the specific cigarette pack packaging reflected by the specimen submitted by Opposer with its Statement of Use filed February 7, 2005 in Application Ser. No. 78/066,805 and of the specific carton packaging for the carton referred to in Opposer's Invoice #35, ACC-000069.

Response: Enclosed.

(f) the distribution of any of the packaging referred to in Document Request No.37(e) outside of Florida.

Response: Enclosed.

(g) any redesign of any of the packaging referred to in Document Request No. 37(e), and the timing of such redesign.

Response: Enclosed.

(h) any prototype packaging in 2005 for Opposer's UNION brand cigarettes.

)  
Response: Enclosed.

(38) Representative documents reflecting the relationships, including in terms of ownership and management, between:

- (a) Opposer and F.T.S. Distributors C.D.A;
- (b) Opposer and F.T.S. Distributors California; and
- (c) F.T.S. Distributors C.D.A. and F.T.S. Distributors California.

Response: Objection, in that Opposer does not understand the meaning of “representative documents.” Opposer’s relationship is shown in its responses to Applicant’s Requests for Admissions. At this time, no documents are readily available. Opposer will continue to search for these items and produce them in a timely fashion.

(39) Representative documents reflecting the owners of:

- (a) Opposer;
- (b) F.T.S. Distributors C.D.A; and
- (c) F.T.S. Distributors California.

Response: Objection, in that Opposer does not understand the meaning of “representative documents.” Opposer’s relationship is shown in its responses to Applicant’s Requests for Admissions. At this time, no documents are readily available. Opposer will continue to search for these items and produce them in a timely fashion.

(40) All documents referring to the need to file a SOU for application App. No. 78/066,805 prior to February 19,2005.

Response: Objection. Attorney Client Privilege.

(41) All documents referring to the plans for and arrangements for the shipment of any packages or cartons of UNION cigarettes from FTS Distributors C.D.A. to FTS Distributors California.

Response; Documents are not in the possession and control of Opposer.

Dated: Oct 15, 2009\_\_\_\_\_

Respectfully Submitted:

/s/ Robert Kain  
Robert C. Kain, Jr.  
Darren Spielman  
Kain & Associates, Attorneys at Law, P.A.  
750 Southeast Third Avenue, Suite 100  
Ft. Lauderdale, Florida 33316  
Phone: 954-768-9002  
Fax: 954-768-0158  
rkain@ComplexIP.com  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 15 day of Oct, 2009, a true copy of the foregoing Opposer's Reply to Applicant's Second Request for Production was served via email to the following:

Tara Vold  
J. Paul Williamson  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Tel: 202-662-0200  
Fax: 202-662-4643

/s/ Robert Kain  
Robert C. Kain, Jr.

## **EXHIBIT 29**



(58) Produce any and all documents related to any feedback received by Opposer from any consumers in response to any shipments of sample UNION cigarettes prior to February 4, 2005.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(59) Produce all documents related to any feedback received by Opposer from any consumers in response to any shipments of sample UNION cigarettes during the to February 4, 2005 to August 23, 2005 time period.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(60) Produce any and all documents accompanying the shipment of a carton of UNION cigarettes referred to in Opposer's Invoice #35, ACC-000069.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request other than those already produced. Since discovery remains ongoing,

Opposer will continue to search for records that may be available or responsive to this request, however due to the age of the documents is unsure whether any exist.

(61) Produce any and all documents received by Opposer from FTS California related to the shipment of UNION cigarettes referred to in Opposer's Invoice #35, ACC-000069.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request.

(62) Produce any and all documents identifying the relationship between Opposer and United American Tobacco LLC, the signatory of the Agreement with Falcon of America LLC, produced as ACC 000699 - ACC 000728.

RESPONSE: Opposer further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Opposer states that it has no documents responsive to this Request. United American Tobacco LLC, was never operational and no documents exist, other than the above identified contract.

(63) Produce any and all documents showing the relationship between Mr. Battah and United American Tobacco LLC.

## **EXHIBIT 30**

▷

**Effective: April 1, 2009**

United States Code Annotated Currentness

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes (Refs & Annos)

↳ Chapter 52. Tobacco Products and Cigarette Papers and Tubes (Refs & Annos)

↳ Subchapter A. Definitions; Rate and Payment of Tax; Exemption from Tax; and Refund and Draw-back of Tax (Refs & Annos)

→ → § 5701. Rate of tax

(a) **Cigars.**--On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) **Small cigars.**--On cigars, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) **Large cigars.**--On cigars weighing more than 3 pounds per thousand, a tax equal to 52.75 percent of the price for which sold but not more than 40.26 cents per cigar.

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) **Cigarettes.**--On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) **Small cigarettes.**--On cigarettes, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) **Large cigarettes.**--On cigarettes, weighing more than 3 pounds per thousand, \$105.69 per thousand; except that, if more than 6 1/2 inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette.

(c) **Cigarette papers.**--On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 3.15 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6 1/2 inches in length, they shall be taxable at the rate prescribed, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette paper.

## I.R.C. § 5701

**(d) Cigarette tubes.**--On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6 1/2 inches in length, they shall be taxable at the rate prescribed, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette tube.

**(e) Smokeless tobacco.**--On smokeless tobacco, manufactured [FN1] in or imported into the United States, there shall be imposed the following taxes:

**(1) Snuff.**--On snuff, \$1.51 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

**(2) Chewing tobacco.**--On chewing tobacco, 50.33 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

**(f) Pipe tobacco.**--On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$2.8311 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

**(g) Roll-your-own tobacco.**--On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$24.78 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

**(h) Imported tobacco products and cigarette papers and tubes.**--The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles, unless such import duties are imposed in lieu of internal revenue tax.

## CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 705; Mar. 30, 1955, c. 18, § 3(a)(9), 69 Stat. 14; Mar. 29, 1956, c. 115, § 3(a)(9), 70 Stat. 66; Mar. 29, 1957, Pub.L. 85-12, § 3(a)(7), 71 Stat. 9; June 30, 1958, Pub.L. 85-475, § 3(a)(7), 72 Stat. 259; Sept. 2, 1958, Pub.L. 85-859, Title II, § 202, 72 Stat. 1414; June 30, 1959, Pub.L. 86-75, § 3(a)(7), 73 Stat. 157; June 30, 1960, Pub.L. 86-564, Title II, § 202(a)(9), 74 Stat. 290; Sept. 14, 1960, Pub.L. 86-779, § 1, 74 Stat. 998; June 30, 1961, Pub.L. 87-72, § 3(a)(9), 75 Stat. 193; June 28, 1962, Pub.L. 87-508, § 3(a)(8), 76 Stat. 114; June 29, 1963, Pub.L. 88-52, § 3(a)(9), 77 Stat. 72; June 30, 1964, Pub.L. 88-348, § 2(a)(9), 78 Stat. 237; June 21, 1965, Pub.L. 89-44, Title V, §§ 501(f), 502(a), 79 Stat. 150; Jan. 2, 1968, Pub.L. 90-240, § 4(a), 81 Stat. 776; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1905(a)(24), Title XXI, § 2128(a), 90 Stat. 1821, 1921; Sept. 3, 1982, Pub.L. 97-248, Title II, § 283(a), 96 Stat. 568; Apr. 7, 1986, Pub.L. 99-272, Title XIII, § 13202(a), 100 Stat. 311; Nov. 10, 1988, Pub.L. 100-647, Title V, § 5061(a), 102 Stat. 3679; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11202(a) to (f), 104 Stat. 1388-419; Aug. 5, 1997, Pub.L. 105-33, Title IX, § 9302(a) to (g)(1), (h)(3), 111 Stat. 671, 672, 674; Feb. 4, 2009, Pub.L. 111-3, Title VII, § 701(a) to (g), 123 Stat. 106.)

[FN1] So in original. Probably should be "manufactured".

## **EXHIBIT 31**

C

Effective: March 31, 2009

Code of Federal Regulations Currentness

Title 27. Alcohol, Tobacco Products and Firearms  
 Chapter I. Alcohol and Tobacco Tax and Trade Bureau,  
 Department of the Treasury (Refs & Annos)

Subchapter B. Tobacco (Refs & Annos)

Part 40. Manufacture of Tobacco Products,  
 Cigarette Papers and Tubes, and Processed To-

bacco [Heading Revised by 74 FR 29408, Effective June 22, 2009 through June 22, 2012] (Refs & Annos)

Subpart C. Taxes

→ § 40.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	\$19.50	\$50.33
Large cigarettes up to 6 1/2 " long	\$40.95	\$105.69
Large cigarettes over 6 1/2 " long	Taxed at the rate for small cigarettes, counting each 2 3/4 " or fraction thereof of the length of each as one cigarette.	

27 C. F. R. § 40.23, 27 CFR § 40.23

[26 FR 8174, Aug. 31, 1961; 40 FR 16835, April 15, 1975, and amended by T.D. ATF-115, 47 FR 51862, Nov. 18, 1982; 51 FR 30485, Aug. 27, 1986; T.D. ATF-307, 55 FR 52742, Dec. 21, 1990; T.D. ATF-420, 64 FR 71940, Dec. 22, 1999; T.D. TTB-75, 74 FR 14482, March 31, 2009; T.D. TTB-85, 75 FR 42607, July 22, 2010]

Current through November 23, 2011; 76 FR 72600.

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SOURCE: 26 FR 8174, Aug. 31, 1961; 40 FR 16835, April 15, 1975; 50 FR 51389, Dec. 17, 1985; 51 FR 28079, Aug. 5, 1986; 51 FR 30485, Aug. 27, 1986; 52 FR 533, Jan. 7, 1987; 52 FR 669, Jan. 9, 1987; 52 FR 47560, Dec. 15, 1987; 53 FR 17559, May 17, 1988; T.D. ATF-429, 65 FR 57547, Sept. 25, 2000; T.D. ATF-459, 66 FR 38550, July 25, 2001; T.D. ATF-460, 66 FR 39093, July 27, 2001; T.D. ATF-487, 68 FR 3747, Jan. 24, 2003; T.D. TTB-78, 74 FR 29408, June 22, 2009; T.D. TTB-79, 74 FR 37419, July 28, 2009; T.D. TTB-84, 75 FR 16667, April 2, 2010; T.D. TTB-89, 76 FR 3513, Jan. 20, 2011, unless otherwise noted.

AUTHORITY: 26 U.S.C. 448, 5701, 5703-5705, 5711-5713, 5721-5723, 5731-5734, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

## **EXHIBIT 32**



# **CONFIDENTIAL DOCUMENT**

## **EXHIBIT 33**

**CONFIDENTIAL DOCUMENT**

## **EXHIBIT 34**

United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any antitrust investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

**(d) Petition for order requiring performance by custodian of duties; venue**

At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person, and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this chapter.

**(e) Jurisdiction; appeal; contempts**

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this chapter. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

**(f) Applicability of Federal Rules of Civil Procedure**

To the extent that such rules may have application and are not inconsistent with the provisions of this chapter, the Federal Rules of Civil Procedure shall apply to any petition under this chapter.

**(g) Disclosure exemption**

Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this chapter shall be exempt from disclosure under section 552 of title 5.

(Pub. L. 87-664, § 5, Sept. 19, 1962, 76 Stat. 551; Pub. L. 94-435, title I, § 104, Sept. 30, 1976, 90 Stat. 1389; Pub. L. 96-349, § 2(b)(5), Sept. 12, 1980, 94 Stat. 1155.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87-664, which is classified generally to this chapter. For complete classification

of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**AMENDMENTS**

1980—Subsec. (b). Pub. L. 96-349, § 2(b)(5)(A), designated existing provisions as par. (1), provided for filing and serving a petition for an order modifying or setting aside a demand in the case of an express demand for any product of discovery upon the person from whom the discovery was obtained, incorporated existing provision in cl. (A), added cl. (B), and designated existing provisions as par. (2).

Subsecs. (c), (d). Pub. L. 96-349, § 2(b)(5)(B) to (D), added subsec. (c), redesignated former subsec. (c) as (d) and authorized petition, in the case of an express demand for any product of discovery, by the person from whom the discovery was obtained, for an order requiring performance by the custodian of his duties. Former subsec. (d) redesignated (e).

Subsecs. (e) to (g). Pub. L. 96-349, § 2(b)(5)(B), redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

1976—Subsec. (a). Pub. L. 94-435, § 104(a), struck out provision which permitted a petition for an enforcement order to be filed in the judicial district where a person who had failed to comply with a demand and who transacted business in one or more districts, maintained his principal place of business, or in such other district, in which such person transacted business, as was agreed upon by the parties to the petition.

Subsec. (b). Pub. L. 94-435, § 104(b), (c), inserted "or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand," after "whichever period is shorter", substituted "antitrust investigator" for "custodian" before "a petition for an order", and inserted proviso that petitioner should comply with portions of a contested demand which are not being challenged.

Subsec. (c). Pub. L. 94-435, § 104(d), substituted "or answers to interrogatories delivered, or transcripts of oral testimony given" for "delivered".

Subsec. (f). Pub. L. 94-435, § 104(e), added subsec. (f).

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

**CHAPTER 35—SEAT BELT REGULATION**

§§ 1321 to 1323. Repealed. Pub. L. 89-563, title I, § 117(a), Sept. 9, 1966, 80 Stat. 727

Sections, Pub. L. 88-201, §§ 1-3, Dec. 13, 1963, 77 Stat. 361, provided for the promulgation of standards for seat belts in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of seat belts not meeting the published standards. For savings provision, see section 117(b) to (e) of Pub. L. 89-563, formerly set out as a note under section 1301 of this title.

**CHAPTER 36—CIGARETTE LABELING AND ADVERTISING**

Sec.	
1331.	Congressional declaration of policy and purpose.
1332.	Definitions.
1333.	Labeling; requirements; conspicuous statement.
1334.	Preemption.
1335.	Unlawful advertisements on medium of electronic communication.
1335a.	List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality.

- Sec.  
 1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices.  
 1337. Omitted.  
 1338. Criminal penalty.  
 1339. Injunction proceedings.  
 1340. Cigarettes for export.  
 1341. Smoking, research, education and information.

### § 1331. Congressional declaration of policy and purpose

It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

- (1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and
- (2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

(Pub. L. 89-92, § 2, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 87; Pub. L. 98-474, § 6(a), Oct. 12, 1984, 98 Stat. 2204.)

#### AMENDMENTS

1984—Par. (1). Pub. L. 98-474 substituted "about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement;" for "that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes;".

1970—Pub. L. 91-222 reenacted section without change.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91-222 provided in part that: "All other provisions of the amendment made by this Act [enacting section 1340 of this title, amending this section and sections 1332 and 1335 to 1339 of this title, and enacting provisions set out as notes under this section] except where otherwise specified shall take effect on January 1, 1970."

#### EFFECTIVE DATE

Section 12, formerly § 11, of Pub. L. 89-92 as renumbered by Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "This Act [this chapter] shall take effect on January 1, 1966."

#### SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-474 provided that: "This Act [enacting sections 1335a and 1341 of this title, amending this section and sections 1332, 1333, 1336, and 1337 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1335a of this title] may be cited as the 'Comprehensive Smoking Education Act'."

#### SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93-109 provided: "That this Act [amending sections 1332 and 1335 of this title] may be cited as the 'Little Cigar Act of 1973'."

#### SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91-222 provided: "That this Act [enacting section 1340 of this title, amending this sec-

tion and sections 1332 to 1339 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1334 of this title] may be cited as the 'Public Health Cigarette Smoking Act of 1969'."

#### SHORT TITLE

Section 1 of Pub. L. 89-92 provided: "This Act [enacting this chapter] may be cited as the 'Federal Cigarette Labeling and Advertising Act'."

#### SEPARABILITY

Section 13, formerly § 12, of Pub. L. 89-92 as added by section 2 of Pub. L. 91-222, and renumbered Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby."

#### CONGRESSIONAL STATEMENT OF PURPOSE

Section 2 of Pub. L. 98-474 provided that: "It is the purpose of this Act [see Short Title of 1984 Amendment note above] to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings and to enable individuals to make informed decisions about smoking."

### § 1332. Definitions

As used in this chapter—

- (1) The term "cigarette" means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term "State" includes any political division of any State.

(4) The term "package" means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "person" means an individual, partnership, corporation, or any other business or legal entity.

(6) The term "sale or distribution" includes sampling or any other distribution not for sale.

(7) The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(8) The term "brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 89-92, § 3, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 93-109, § 2, Sept. 21, 1973, 87 Stat. 352; Pub. L. 93-474, § 6(b), Oct. 12, 1984, 98 Stat. 2204; Pub. L. 99-92, § 11(b), Aug. 16, 1985, 99 Stat. 403.)

#### AMENDMENTS

1985—Pars. (8), (9). Pub. L. 99-92 added par. (8) and redesignated former par. (8) as (9).

1984—Par. (8). Pub. L. 98-474 added par. (8).

1973—Subsec. (7). Pub. L. 93-109 added subsec. (7).

1970—Subsec. (3). Pub. L. 91-222 inserted provisions defining "State".

#### EFFECTIVE DATE OF 1973 AMENDMENT

Section 4 of Pub. L. 93-109 provided that: "The amendment made by this Act [amending this section and section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973]."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

### § 1333. Labeling; requirements; conspicuous statement

#### (a) Required warnings; packages; advertisements; billboards

(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

(2) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised (other than through the use of outdoor billboards) within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

(3) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States through the use of outdoor billboards any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, And Emphysema.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Health Risks.

SURGEON GENERAL'S WARNING: Pregnant Women Who Smoke Risk Fetal Injury And Premature Birth.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

#### (b) Conspicuous statement; label statement format; outdoor billboard statement format

(1) Each label statement required by paragraph (1) of subsection (a) of this section shall be located in the place label statements were placed on cigarette packages as of October 12, 1984. The phrase "Surgeon General's Warning" shall appear in capital letters and the size of all other letters in the label shall be the same as the size of such letters as of October 12, 1984. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package.

(2) The format of each label statement required by paragraph (2) of subsection (a) of this section shall be the format required for label statements in cigarette advertising as of October 12, 1984, except that the phrase "Surgeon General's Warning" shall appear in capital letters, the area of the rectangle enclosing the label shall be 50 per centum larger in size with a corresponding increase in the size of the type in the label, the width of the rule forming the border around the label shall be twice that in effect on October 12, 1984, and the label may be placed at a distance from the outer edge of the advertisement which is one-half the distance permitted on October 12, 1984. Each label statement shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the advertisement.

(3) The format and type style of each label statement required by paragraph (3) of subsection (a) of this section shall be the format and type style required in outdoor billboard advertising as of October 12, 1984. Each such label statement shall be printed in capital letters of the height of the tallest letter in a label statement on outdoor advertising of the same dimen-

sion on October 12, 1984. Each such label statement shall be enclosed by a black border which is located within the perimeter of the format required in outdoor billboard advertising of the same dimension on October 12, 1984, and the width of which is twice the width of the vertical element of any letter in the label statement within the border.

**(c) Rotation of label statement; plan; submission to Federal Trade Commission**

(1) Except as provided in paragraph (2), the label statements specified in paragraphs (1), (2), and (3) of subsection (a) of this section shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1), (2), and (3) will be displayed by the manufacturer or importer at the same time.

(2)(A) A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than one-fourth of 1 percent of all the cigarettes sold in the United States in such year, and

(ii) more than one-half of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the one-year period beginning on the date of the application approval.

(B) An applicant under subparagraph (A) shall include in its application a plan under which the label statements specified in paragraph (1) of subsection (a) of this section will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).

(C) Under the label rotation which a manufacturer or importer with an approved application may put into effect each of the labels specified in paragraph (1) of subsection (a) of this section shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the twelve-month period beginning on the date of the approval by the Commission of the application.

**(d) Application; distributors; retailers**

Subsection (a) of this section does not apply to a distributor or a retailer of cigarettes who does

not manufacture, package, or import cigarettes for sale or distribution within the United States.

(Pub. L. 89-92, § 4, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 98-474, § 4(a), Oct. 12, 1984, 98 Stat. 2201; Pub. L. 99-82, § 11[(a)], Aug. 16, 1985, 99 Stat. 402; Pub. L. 99-117, § 11(d), Oct. 7, 1985, 99 Stat. 495; Pub. L. 111-31, div. A, title II, §§ 201(a), 202(b), 206, June 22, 2009, 123 Stat. 1842, 1845, 1849.)

**AMENDMENT OF SECTION**

*Pub. L. 111-31, div. A, title II, § 201, June 22, 2009, 123 Stat. 1842, provided that, effective 15 months after the issuance of the regulations required by section 201(a) of Pub. L. 111-31, this section is amended to read as follows:*

**§ 1333. Labeling**

**(a) Label requirements**

**(1) In general**

*It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:*

*WARNING: Cigarettes are addictive.*

*WARNING: Tobacco smoke can harm your children.*

*WARNING: Cigarettes cause fatal lung disease.*

*WARNING: Cigarettes cause cancer.*

*WARNING: Cigarettes cause strokes and heart disease.*

*WARNING: Smoking during pregnancy can harm your baby.*

*WARNING: Smoking can kill you.*

*WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.*

*WARNING: Quitting smoking now greatly reduces serious risks to your health.*

**(2) Placement; typography; etc.**

*Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word "WARNING" shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).*

**(3) Does not apply to foreign distribution**

*The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.*

**(4) Applicability to retailers**

*A retailer of cigarettes shall not be in violation of this subsection for packaging that—*



- (A) contains a warning label;
- (B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and
- (C) is not altered by the retailer in a way that is material to the requirements of this subsection.

(b) Advertising requirements

(1) In general

It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

(2) Typography, etc.

Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

(3) Matchbooks

Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by

subsection (a) may be printed on the inside cover of the matchbook.

(4) Adjustment by Secretary

The Secretary may, through a rulemaking under section 553 of title 5, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

(c) Marketing requirements

(1) Random display

The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

(2) Rotation

The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

(3) Review

The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(4) Applicability to retailers

This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

(d) Graphic label statements

Not later than 24 months after June 22, 2009, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Sec-

retary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.

Pub. L. 111-31, div. A, title II, § 202(b), June 22, 2009, 123 Stat. 1845, provided that this section, as amended by section 201 of Pub. L. 111-31, is further amended by adding at the end the following:

(d) *Change in required statements*

The Secretary through a rulemaking conducted under section 553 of title 5 may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

Pub. L. 111-31, div. A, title II, § 206, June 22, 2009, 123 Stat. 1849, provided that this section, as amended by sections 201 and 202 of Pub. L. 111-31, is further amended by adding at the end the following:

(e) *Tar, nicotine, and other smoke constituent disclosure*

(1) *In general*

The Secretary shall, by a rulemaking conducted under section 553 of title 5, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

(2) *Resolution of differences*

Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

(3) *Cigarette and other tobacco product constituents*

In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

(4) *Retailers*

This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.

AMENDMENTS

1985—Subsec. (c), Pub. L. 99-92 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), the" for "The label", and added par. (2).

Subsec. (c)(2)(A), Pub. L. 99-117 substituted "brand style" for "brand" in provisions preceding cl. (1).

1984—Pub. L. 98-474 amended section generally, designating existing provisions as subsec. (a), expanding choice of warnings to be placed on cigarette packaging and further expanding scope of places that must contain warnings to include advertisements and outdoor billboards, and adding subssecs. (b) to (d).

1970—Pub. L. 91-222 substituted "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" for "Caution: Cigarette Smoking May Be Hazardous to Your Health."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-31, div. A, title II, § 201(b), June 22, 2009, 123 Stat. 1845, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 15 months after the issuance of the regulations required by subsection (a) [amending this section]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a)."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 11(c) of Pub. L. 99-92 provided that:

"(1) The amendments made by subsection (a) [probably refers to undesignated par. preceding subsec. (b), amending this section] shall take effect October 12, 1985, except that—

"(A) on and after the date of the enactment of this Act [Aug. 16, 1985] a manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation specified in section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), apply to its brand styles of cigarettes and the Commission may take action on such an application, and

"(B) a manufacturer or importer of cigarettes may elect to have the amendments apply at an earlier date or dates selected by the manufacturer or importer.

"(2) The Federal Trade Commission may, upon application of a manufacturer or importer of cigarettes with an approved application under section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), extend the effective date specified in paragraph (1) to January 11, 1986. The Commission may approve an application for such an extension only if the Commission determines that the effective date specified in such paragraph (1) would cause unreasonable economic hardship to the applicant. Section 4 of the Federal Cigarette Labeling and Advertising Act [this section], as in effect before October 12, 1985, shall apply with respect to a manufacturer or importer with an application approved under this paragraph."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(b) of Pub. L. 98-474 provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

## EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91-222 provided in part that: "Section 4 of the amendment made by this Act [amending this section] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act [Apr. 1, 1970]."

**§ 1334. Preemption****(a) Additional statements**

Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no statement relating to smoking and health, other than the statement required by section 1333 of this title, shall be required on any cigarette package.

**(b) State regulations**

No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

**(c) Exception**

Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.

(Pub. L. 89-92, § 5, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 111-31, div. A, title II, §§ 202(a), 203, June 22, 2009, 123 Stat. 1845, 1846.)

## REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), is div. A of Pub. L. 111-31, June 22, 2009, 123 Stat. 1778. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

The effective date of the Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 111-31, which was approved June 22, 2009.

## AMENDMENTS

2009—Subsec. (a). Pub. L. 111-31, § 202(a), substituted "Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no" for "No".

Subsec. (c). Pub. L. 111-31, § 203, added subsec. (c). 1970—Subsec. (b). Pub. L. 91-222 substituted provision that no requirement or prohibition based on smoking and health should be imposed under State law with respect to the advertising or promotion of any cigarettes which packages are labeled in conformity with the provisions of this chapter for provision that no statement relating to smoking and health should be required in the advertising of any cigarettes which packages are labeled in conformity with the provisions of this chapter.

Subsecs. (c), (d). Pub. L. 91-222 struck out subsecs. (c) and (d) relating to the authority of the Federal Trade Commission with respect to unfair or deceptive advertising acts or practices, and reports to Congress by the Secretary of Health, Education, and Welfare and the Federal Trade Commission. See sections 1336 and 1337 of this title.

## EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91-222 provided in part that: "Section 5 of the amendment made by this Act [amending this section] shall take effect as of July 1, 1969."

**§ 1335. Unlawful advertisements on medium of electronic communication**

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(Pub. L. 89-92, § 6, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; Pub. L. 93-109, § 3, Sept. 21, 1973, 87 Stat. 352.)

## AMENDMENTS

1973—Pub. L. 93-109 extended prohibition against advertisements to little cigars.

1970—Pub. L. 91-222 substituted provision that after January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission, for provision that a violation of this chapter should constitute misdemeanor and be punishable by fine. See, now, section 1338 of this title.

## EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-109 effective thirty days after Sept. 21, 1973, see section 4 of Pub. L. 93-109, set out as a note under section 1332 of this title.

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

**§ 1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality**

(a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;

(B) information pertaining to any such ingredient which in the judgement of the Secretary poses a health risk to cigarette smokers; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) of this section shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5 and section 1905 of title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

(Pub. L. 89-92, § 7, as added Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

#### PRIOR PROVISIONS

A prior section 7 of Pub. L. 89-92 was renumbered section 8 and is classified to section 1336 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 5(b) of Pub. L. 98-474 provided that: "Section 7 of the Federal Cigarette Labeling and Advertising Act [this section] added by subsection (a) shall take effect upon the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

#### § 1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices

Nothing in this chapter (other than the requirements of section 1333 of this title) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

(Pub. L. 89-92, § 8, formerly § 7, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered § 8 and amended Pub. L. 98-474, § 5(a), 6(c), Oct. 12, 1984, 98 Stat. 2203, 2204; Pub. L. 99-92, § 12, Aug. 16, 1985, 99 Stat. 404.)

#### PRIOR PROVISIONS

A prior section 8 of Pub. L. 89-92 was renumbered section 9, classified to section 1337 of this title, and subsequently omitted from the Code.

#### AMENDMENTS

1985—Pub. L. 99-92 struck out "(b)" after "1333".

1984—Pub. L. 98-474 amended section generally, striking out subsecs. (a) and (c) which dealt with the authority of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, which left the provisions of former subsec. (b) to constitute this section.

1970—Pub. L. 91-222 substituted provisions concerning the action of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising, the Commission's authority with respect to unfair or deceptive cigarette advertising acts or practices, and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, for provisions investing the several district courts with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon proper application. See section 1339 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

#### § 1337. Omitted

#### CODIFICATION

Section, Pub. L. 89-92, § 9, formerly § 8, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered § 9 and amended Pub. L. 98-474, § 5(a), 6(d), Oct. 12, 1984, 98 Stat. 2203, 2205, which required the Secretary of Health and Human Services to transmit an annual report to Congress concerning health consequences of smoking and recommendations for legislation, and which required the Federal Trade Commission to transmit an annual report to Congress concerning practices and methods of cigarette advertising and promotion and recommendations for legislation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 96 and 172 of House Document No. 103-7.

A prior section 9 of Pub. L. 89-92 was renumbered section 10 and is classified to section 1338 of this title.

#### § 1338. Criminal penalty

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$10,000.

(Pub. L. 89-92, § 10, formerly § 9, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered § 10, Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

#### PRIOR PROVISIONS

A prior section 10 of Pub. L. 89-92 was renumbered section 11 and is classified to section 1339 of this title.

#### AMENDMENTS

1970—Pub. L. 91-222 substituted provisions that violators shall be guilty of a misdemeanor and subject to fine, for provision that if any part of this chapter be held invalid, other provisions thereof shall not be affected. See Separability note set out under section 1331 of this title.

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

**§ 1339. Injunction proceedings**

The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(Pub. L. 89-92, § 11, formerly § 10, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered § 11, Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

## PRIOR PROVISIONS

Two prior sections 11 of Pub. L. 89-92 were renumbered section 12 by section 5(a) of Pub. L. 98-474 and are classified to section 1340 of this title and as an Effective Date note under section 1331 of this title.

## AMENDMENTS

1970—Pub. L. 91-222 substituted provision that the several district courts are invested with jurisdiction in injunction proceedings, for provisions that regulation of advertising terminate on July 1, 1969, but that such termination shall not be construed as limiting, expanding or otherwise affecting such jurisdiction which Federal Trade Commission or other federal agencies had prior to July 27, 1965.

## EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

**§ 1340. Cigarettes for export**

Packages of cigarettes manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this chapter, but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(Pub. L. 89-92, § 12, formerly § 11, as added Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered § 12, Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

## CODIFICATION

Another section 12 of Pub. L. 89-92, July 27, 1965, 79 Stat. 284, is set out as an Effective Date note under section 1331 of this title.

## PRIOR PROVISIONS

A prior section 12 of Pub. L. 89-92 was renumbered section 13 and is set out as a Separability note under section 1331 of this title.

## EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

**§ 1341. Smoking, research, education and information****(a) Establishment of program; Secretary; functions**

The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking. In carrying out such program, the Secretary shall—

(1) conduct and support research on the effect of cigarette smoking on human health and develop materials for informing the public of such effect;

(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services (hereinafter in this section referred to as the "Department") which relate to the effect of cigarette smoking on human health and coordinate, through the Interagency Committee on Smoking and Health (established under subsection (b) of this section), such activities with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain a liaison with appropriate private entities, other Federal agencies, and State and local public agencies respecting activities relating to the effect of cigarette smoking on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking on human health, and develop standards, criteria, and methodologies for improved information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes; and

(6) undertake any other additional information and research activities which the Secretary determines necessary and appropriate to carry out this section.

**(b) Interagency Committee on Smoking and Health; composition; chairman; compensation; staffing and other assistance**

(1) To carry out the activities described in paragraphs (2) and (3) of subsection (a) of this section there is established an Interagency Committee on Smoking and Health. The Committee shall be composed of—

(A) members appointed by the Secretary from appropriate institutes and agencies of the Department, which may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the Eunice Kennedy Shriver National Institute of Child Health and Human Development, the National Institute on Drug Abuse, the Health Resources and Services Administration, and the Centers for Disease Control and Prevention;

(B) at least one member appointed from the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be

made by the head of the entity from which the member is appointed; and

(C) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of smoking.

The Secretary shall designate the chairman of the Committee.

(2) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence,<sup>1</sup> in the manner provided by sections 5702 and 5703 of title 5.

(3) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities effectively.

**(c) Report to Congress; contents**

The Secretary shall transmit a report to Congress not later than January 1, 1986, and biennially thereafter which shall contain—

(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and the extent of public knowledge of such consequences,

(2) a description of the Secretary's and Committee's activities under subsection (a) of this section,

(3) information regarding the activities of the private sector taken in response to the effects of smoking on health, and

(4) such recommendations as the Secretary may consider appropriate.

(Pub. L. 98-474, § 3, Oct. 12, 1984, 98 Stat. 2200; Pub. L. 99-92, § 13, Aug. 16, 1985, 99 Stat. 404; Pub. L. 102-531, title III, § 312(a), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 110-154, § 1(c)(1), Dec. 21, 2007, 121 Stat. 1827.)

**CODIFICATION**

Section was enacted as part of the Comprehensive Smoking Education Act, and not as part of the Federal Cigarette Labeling and Advertising Act which comprises this chapter.

**AMENDMENTS**

2007—Subsec. (b)(1)(A). Pub. L. 110-154 substituted "Eunice Kennedy Shriver National Institute of Child Health and Human Development" for "National Institute of Child Health and Human Development".

1992—Subsec. (b)(1)(A). Pub. L. 102-531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

1985—Subsec. (c). Pub. L. 99-92 substituted "1986" for "1985".

**CHAPTER 37—STATE TECHNICAL SERVICES**

Sec.	
1351.	Declaration of purpose.
1352.	Definitions.
1353.	Selection of designated agency.
1354.	Five-year plan; annual technical services program.
1355.	Conditions precedent to acceptance of plans and programs for review and approval by Secretary.
1356.	Review and approval of plans and programs by Secretary.

<sup>1</sup> So in original. Probably should be "subsistence".

Sec.	
1357.	Interstate cooperation in administration and coordination of plans and programs.
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**§ 1351. Declaration of purpose**

Congress finds that wider diffusion and more effective application of science and technology in business, commerce, and industry are essential to the growth of the economy, to higher levels of employment, and to the competitive position of United States products in world markets. The Congress also finds that the benefits of federally financed research, as well as other research, must be placed more effectively in the hands of American business, commerce, and industrial establishments. The Congress further finds that the several States through cooperation with universities, communities, and industries can contribute significantly to these purposes by providing technical services designed to encourage a more effective application of science and technology to both new and established business, commerce, and industrial establishments. The Congress, therefore, declares that the purpose of this chapter is to provide a national program of incentives and support for the several States individually and in cooperation with each other in their establishing and maintaining State and interstate technical service programs designed to achieve these ends.

(Pub. L. 89-182, § 1, Sept. 14, 1965, 79 Stat. 679.)

**SHORT TITLE**

Section 19 of Pub. L. 89-182 provided that: "This Act [this chapter] may be cited as the 'State Technical Services Act of 1965'."

**§ 1352. Definitions**

For the purposes of this chapter—

(a) "Technical services" means activities or programs designed to enable businesses, commerce, and industrial establishments to acquire and use scientific and engineering information more effectively through such means as—

(1) preparing and disseminating technical reports, abstracts, computer tapes, microfilm, reviews, and similar scientific or engineering information, including the establishment of State or interstate technical information centers for this purpose;

(2) providing a reference service to identify sources of engineering and other scientific expertise; and

## **EXHIBIT 35**

INTERROGATORY NO.2

Explain why the letter confirming the purchase of UNION cigarettes manufactured by Falcon (produced in connection with the consolidated proceedings and identified as ACC ACC\_000690 thru ACC\_000691), was signed by Mr. Basil Battah on behalf of FTS Distributors, whereas the Falcon Agreement identifies United American Tobacco, LLC as the purchasing entity for the UNION cigarettes.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states the reason is unknown as Mr. Battah does not recall.

INTERROGATORY NO.3

Identify any relationship between the United American Tobacco, LLC and Petitioner, or Mr. Battah or FTS Distributors.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states Mr. Battah owned FTS Distributors and UAT.

INTERROGATORY NO.4

Identify all efforts made by Opposer obtain or verify approval from the Federal Trade Commission for a warning label plan for the UNION branded cigarettes in 2004 and 2005

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in



this proceeding. Respondent further states that ACC has no idea what Falcon did in 2004. In 2005 ACC had their attorney file for the rotation plan, which included providing the flat packs and cartons to him for submission to the FTC.

INTERROGATORY NO. 5

Explain in detail the basis for the \$7.00 charge referenced in Invoice #35, produced in discovery in connection with the consolidated proceedings as ACC-000069.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states that this represents the tax plus the cost of manufacturing. This is the price agreed to between FTS California (not owned by Battah) and FTS Distributors, which included the cost of freight.

INTERROGATORY NO.6

Identify with particularity all "distributors and retailers in and out of the state of Florida" to whom samples of the UNION cigarettes were shipped prior to August 2005, as identified in Opposer's Supplemental Response to Applicant's Interrogatory No.5.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further objects that this request is overly burdensome and broad. Respondent further states that such information is specifically not in the possession or control of Respondent. Notwithstanding the foregoing, Respondent notes that many of these distributors

## **EXHIBIT 36**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

N.V. SUMATRA TOBACCO TRADING CO.,

Petitioner,

v.

AMERICAN CIGARETTE COMPANY INC.

Respondent.

Cancellation No. 92052621 (Consolidated)

Reg. No. 2,972,524

**AFFIDAVIT OF TRACY S. DEMARCO**

Tracy S. DeMarco hereby states and declares as follows:

1. I am an attorney at Fulbright & Jaworski, L.L.P.
2. On March 4, 2011, I reviewed four binders of public documents at the Federal Trade Commission's ("FTC") office, 600 Pennsylvania Ave. NW, Washington, D.C. 20004. The binders were labeled: P854505-P-15, P854505-P-16, P954505-P-17, and P854505-P-18.
3. The binders contained the FTC's public records of manufacturer-submitted and FTC-approved cigarette health warning label plans, as required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331 *et seq.*, from November 26, 2003 to April 27, 2006.
4. At the beginning of each binder, a memorandum listed each document in the binder in chronological order. I retained copies of each memorandum.
5. For each binder, I verified that the memorandum list accurately reflected the documents in the binder. With the exception of binder P854505-P-18, each binder's memorandum was an accurate reflection of its documents.

6. Binder P854505-P-18 contained two memorandums. The first was dated December 14, 2006 and listed documents from June 30, 2005 to December 21, 2005; the second was dated December 18, 2006 and contained documents from December 19. The supporting documents in the binder, however, reflected the December 18, 2006 memorandum. Documents listed in the December 14, 2006 memorandum were not in binder P854505-P-18. Additionally, I searched binders P854505-P-15, P854505-P-16, P854505-P-17, and P854505-P-19. None of those binders contained the documents listed in the December 14, 2006 memorandum.

7. I searched each binder for cigarette health warning label plans submitted by the following entities and individuals: Falcon of America LLC, F.T.S. Distributors FL, Basil Battah, American Automotive Security Products, Inc., Maryjane Cigarette Company, United American Cigarette Company, F.T.S. Distributors CA, Jay Silverina, and Prime Movers Manufacturers Inc.

8. My search yielded the following documents:

- July 7, 2004 letter from Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors to Mary K. Engle of the FTC setting forth a cigarette health warning equalization plan for Desert Sun brand cigarettes.
- July 8, 2004 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors authorizing the cigarette health warning plan for Desert Sun brand cigarettes effective July 8, 2004 to July 7, 2005.
- October 20, 2004 letter from Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors to Mary K.

Engle of the FTC setting forth a cigarette health warning equalization plan for Melbourne brand cigarettes.

- October 29, 2004 letter from January 5, 2006 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors authorizing the cigarette health warning plan for Melbourne brand cigarettes effective October 29, 2004 to July 8, 2005.
- December 20, 2004 letter from Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors to Mary K. Engle of the FTC setting forth a cigarette health warning equalization plan for Unify brand cigarettes.
- December 21, 2004 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors authorizing the cigarette health warning plan for Unify brand cigarettes effective December 21, 2005 to December 20, 2006.
- December 21, 2004 letter from Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors to Mary K. Engle of the FTC setting forth a cigarette health warning equalization plan for Desert Sun brand cigarettes.
- December 21, 2004 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors authorizing the cigarette health warning plan for Desert Sun brand cigarettes effective December 21, 2005 to December 20, 2006.

- February 4, 2005 letter from Andrew M. Parish on behalf of Falcon of America LLC to Mary K. Engle of the FTC setting forth a cigarette health warning equalization plan for Bourbon brand cigarettes.
  - February 9, 2005 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of Falcon of America LLC approving the cigarette health warning label plan for Bourbon brand cigarettes.
  - January 4, 2006 letter from Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors to Mary K. Engle of the FTC setting forth a cigarette health warning equalization plan for Unify brand cigarettes.
  - January 5, 2006 letter from Mary K. Engle of the FTC to Andrew M. Parish on behalf of American Automotive Security Products, Inc. d/b/a F.T.S. Distributors authorizing the cigarette health warning plan for Unify brand cigarettes effective January 5, 2006 to January 4, 2007.
9. I retained copies of each above-referenced document.

10. No other cigarette health warning plan documents submitted by any of the above-referenced entities and individuals appeared in the public record from November 26, 2003 to April 27, 2006.

The affiant says nothing more.

Tracy S. DeMarco  
Tracy S. DeMarco

12/1/11  
Date

I, Linda C. Brown, a notary public in the District of Columbia, hereby affirm that Tracy S. DeMarco personally appeared before me and, after providing appropriate identification and being duly sworn, executed the foregoing Affidavit.

Linda C. Brown  
12-1-2011  
Date



LINDA C. BROWN  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires August 31, 2018

## **EXHIBIT 37**



C

Effective: March 31, 2006

Code of Federal Regulations Currentness

Title 27. Alcohol, Tobacco Products and Firearms  
 Chapter I. Alcohol and Tobacco Tax and Trade  
 Bureau, Department of the Treasury (Refs & Annos)

Subchapter B. Tobacco (Refs & Annos)

Part 40. Manufacture of Tobacco Products,  
 Cigarette Papers and Tubes, and Processed  
 Tobacco [Heading Revised by 74 FR 29408,  
 Effective June 22, 2009 through June 22,  
 2012] (Refs & Annos)

Subpart H. Operations by Manufacturers of Tobacco Products [Heading Revised by 74 FR 29409, Effective June 22, 2009 through June 22, 2012] (Refs & Annos)

Packages

→ § 40.212 Mark.

Every package of tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product subject to tax and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 40.65 may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are packaged and removed subject to tax by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the appropriate TTB officer. Before using the alternative, the manufacturer shall notify the appropriate TTB officer in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the appropriate TTB officer shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be

retained as part of the factory records at each of the factories operated by the manufacturer.

(Authority: 72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 36, Jan. 4, 1966; 40 FR 16835, April 15, 1975; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-460, 66 FR 39094, July 27, 2001; T.D. TTB-44, 71 FR 16949, April 4, 2006]

SOURCE: 26 FR 8174, Aug. 31, 1961; 40 FR 16835, April 15, 1975; 50 FR 51389, Dec. 17, 1985; 51 FR 28079, Aug. 5, 1986; 51 FR 30485, Aug. 27, 1986; 52 FR 533, Jan. 7, 1987; 52 FR 669, Jan. 9, 1987; 52 FR 47560, Dec. 15, 1987; 53 FR 17559, May 17, 1988; T.D. ATF-429, 65 FR 57547, Sept. 25, 2000; T.D. ATF-459, 66 FR 38550, July 25, 2001; T.D. ATF-460, 66 FR 39093, July 27, 2001; T.D. ATF-487, 68 FR 3747, Jan. 24, 2003; T.D. TTB-78, 74 FR 29408, June 22, 2009; T.D. TTB-78, 74 FR 29409, June 22, 2009; T.D. TTB-79, 74 FR 37419, July 28, 2009; T.D. TTB-84, 75 FR 16667, April 2, 2010; T.D. TTB-89, 76 FR 3513, Jan. 20, 2011, unless otherwise noted.

AUTHORITY: 26 U.S.C. 448, 5701, 5703-5705, 5711-5713, 5721-5723, 5731-5734, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

27 C. F. R. § 40.212, 27 CFR § 40.212

Current through November 23, 2011; 76 FR 72600.

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 END OF DOCUMENT

## **EXHIBIT 38**

10. The cigarette pack packaging specimen submitted by Opposer with its Statement of Use of February 7, 2005 in Application Ser. No. 78/066,805 was identical to the cigarette pack packaging for the packages of cigarettes contained within the carton referred to in Opposer's Invoice #35, ACC-000069.

Response: Admitted

11. The cigarette pack packaging specimen submitted by Opposer with its Statement of Use of February 7, 2005 in Application Ser. No. 78/066,805 was a photocopy of the cigarette pack packaging for the packages of cigarettes contained within the carton referred to in Opposer's Invoice #35, ACC-000069.

Response: Admitted

12. The cigarette pack packaging specimen submitted by Opposer with its Statement of Use of February 7, 2005 in Application Ser. No. 78/066,805 did not specify conspicuously the name of the manufacturer, packer or distributor.

Response: Admitted

13. A sale of the carton, or of any packs within that carton, referred to in Opposer's Invoice #35, ACC-000069 to a consumer by F.T.S. Distributors California would not have been in compliance with the Fair Packaging and Labeling Act.

Response: Objection; Calls for a legal conclusion

Supplemental Response: At the time of packaging and sale Opposer believed the cigarettes complied with the Fair Packaging and Labeling Act.

## **EXHIBIT 39**

) and retailers are not in existence anymore. Respondent further states Distributors who would have received samples of Falcon made UNIONS, other than FTS CA; RPM; or Martelli (the current president in Haiti), include United Wholesale, Lakeland FL; V.P. Enterprises Tampa FL; Hardecs KY; Axton Candy and Tobacco KY; B&W Wholesale Murfreesboro TN; Tru-Wholesale TN; TriStar TN; Meade Kentucky Wholesale TN; Supreme Wholesale IL; Harvard Distributing IL; Jacob Kern and Associates, NY; A Harris, NY; Florida Tobacco; Ridgeway Brands, KY

#### INTERROGATORY NO.7

Identify with particularity the "sales agents" identified 10 Opposer's Supplemental Response to Applicant's Interrogatory No.5.

) RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent further states Basil Battah and Chris Meister, who left employment in May 2005, were sales agents.

#### INTERROGATORY NO.8

Explain in detail Respondent's basis for assertion in Opposer's supplemental response to Applicant's Request for Admission No. 13 that it believed a sale of the carton, or of any packs within that carton, referred to in Opposer's Invoice #35, ACC-000069 to a consumer by F.T.S. Distributors California would have been in compliance with the Fair Packaging and Labeling Act.

) RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Respondent objects to this Request to the extent that it seeks a legal opinion. Respondent further states at the time of packing and sale, Basil Battah believed that the cigarettes complied with the Fair Packaging and Labeling Act. Battah had been involved in the cigarette business for years and he believed that the manufactured product complied with the law at that time.

(intentionally left blank)

## **EXHIBIT 40**

CALIFORNIA "COMPLEMENTARY LEGISLATION"

Revenue and Taxation Code section 30165.1

As added by section 7 of ASSEMBLY BILL 71

(Chapter 890 of the Statutes of 2003)

Effective January 1, 2004

30165.1. (a) The following definitions shall apply for purposes of this section:

(1) "Board" means the State Board of Equalization.

(2) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(3) "Cigarette" has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.

(4) "Distributor" has the same meaning as in Section 30011.

(5) "MSA" means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.

(6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(7) "Participating manufacturer" has the same meaning as in subsection II(jj) of the MSA.

(8) "Qualified escrow fund" has the same meaning as in subdivision (f) of Section 104556 of the Health and Safety Code.

(9) "Tobacco product manufacturer" has the same meaning as in subdivision (i) of Section 104556 of the Health and Safety Code.

(10) "Units sold" has the same meaning as in subdivision (j) of Section 104556 of the Health and Safety Code.

(b) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the Attorney General a certification to the Attorney General no later than the 30th day of April each year that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer, or is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including all installment payments required by that article and this section, and any regulations promulgated pursuant thereto. Any person who makes a certification pursuant to this subdivision that



asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(1) A participating manufacturer shall include in its certification a complete list of its brand families. The participating manufacturer shall update the list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(2) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, in accordance with the following requirements:

(A) Separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

(B) Separately listing all of its brand families that have been sold in the state at any time during the current calendar year.

(C) Indicating by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(D) Identifying by name and address any other manufacturer, including all fabricators or makers of the brand families in the preceding or current calendar year in a form, manner, and detail as required by the Attorney General. The nonparticipating manufacturer shall update the list 30 days prior to any change in a fabricator for any brand family or any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify all of the following:

(A) That the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice thereof as required by subdivision (f).

(B) That the nonparticipating manufacturer has done all of the following:

(i) Established and continues to maintain a qualified escrow fund as that term is defined in subdivision (f) of Section 104556 of the Health and Safety Code and implementing regulations.

(ii) Executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund.

(iii) If the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement, certification, reports, and any other forms required by Article 3 (commencing with

Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and implementing regulations are signed by the company that fabricates or makes the cigarettes and in the manner required by the Attorney General.

(C) That the nonparticipating manufacturer is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto.

(D) That the manufacturer has provided all of the following:

(i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(ii) The account number of the qualified escrow fund and subaccount number for the State of California.

(iii) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any confirming evidence or verification as may be deemed necessary by the Attorney General.

(iv) The amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(4) (A) A tobacco product manufacturer may not include a brand family in its certification unless either of the following is true:

(i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the MSA for the relevant year, in the volume and shares determined pursuant to the MSA.

(ii) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, and any regulations promulgated pursuant thereto and this section.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer

for purposes of calculating payments under the MSA or for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto.

(5) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a longer period of time.

(c) Not later than June 30, 2004, the Attorney General shall develop and publish on its Internet Web site a directory listing of all tobacco product manufacturers that have provided current, timely, and accurate certifications conforming to the requirements of subdivision (b) and all brand families that are listed in the certifications, except as specified below.

(1) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subdivision (b), unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes that either of the following is true:

(A) In the case of a nonparticipating manufacturer, any escrow deposit required pursuant to Section 104557 of the Health and Safety Code for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully deposited into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

(B) Any outstanding final judgment, including interest thereon, for violations of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto, has not been fully satisfied for the brand family and the manufacturer.

(3) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall promptly provide distributors with written notice of each tobacco product manufacturer and brand family that the Attorney General has added to, or excluded or removed from the list.

(4) Every distributor shall provide to the Attorney General and update, as necessary, an electronic mail address for the purpose of receiving any notifications as may be required by this section.

(5) The Attorney General shall provide each tobacco product manufacturer that has provided all certifications and other information required by this section with a written acknowledgment of receipt within seven business days after receiving the certifications and other materials. Each tobacco product manufacturer shall provide to each distributor to whom it sells or ships cigarettes, or any tobacco product defined as a cigarette under this section, a copy of each acknowledgment of receipt provided to the manufacturer by the Attorney General. Upon request, the Attorney General shall provide any distributor with a copy of the most recent written acknowledgment of receipt provided to the tobacco product manufacturer.

(d) (1) The Attorney General may exclude or remove from the list required by subdivision (c) a tobacco product manufacturer or any of its brand families, based on a determination that the manufacturer is not a participating manufacturer and has not made all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, in accordance with that subdivision, or has not complied with this section. Before the exclusion or removal may take effect, the Attorney General shall notify the manufacturer of this determination.

(2) Upon receiving notice from the Attorney General pursuant to paragraph (1), the manufacturer may challenge the Attorney General's determination as erroneous, and may seek relief from the determination, by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure for that purpose in the Superior Court for the County of Sacramento, or as otherwise provided by law. The filing of the petition shall operate to stay the Attorney General's determination, if the manufacturer has paid into escrow the full amount of any deficiency in the escrow payments that the Attorney General has determined the tobacco product manufacturer was required to have made under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, including any installment payments required under subdivision (h), pending final resolution of the action.

(e) (1) No person shall affix, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes pursuant to subdivision (a) of Section 30163, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the list posted by the Attorney General pursuant to subdivision (c).

(2) No person shall sell, offer, or possess for sale in this

state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) No person shall do either of the following:

(A) Sell or distribute cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(f) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent, as provided in Section 2105 of the Corporations Code, and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State pursuant to this provision as the agent for service of process does not satisfy the condition precedent specified in paragraph (1) to having its brand families listed or retained in

the directory.

(g) (1) Not later than 25 days after the end of each calendar quarter, and more frequently if so directed by the board or the Attorney General, each distributor shall submit any information as the board or Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll your own, the total ounces for which the distributor affixed stamps during the previous calendar month or otherwise paid the tax due for those cigarettes. The distributor shall maintain, and shall make available to the board and the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the board and the Attorney General for a period of five years.

(2) Notwithstanding Section 30455, the board is authorized to disclose to the Attorney General any information received under this part for purposes of determining compliance with and enforcing the provisions of this section and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto. The board and Attorney General shall share with each other the information received under this section, and may share that information with other federal, state, or local agencies, only for purposes of enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, or corresponding laws of other states.

(3) At any time, the Attorney General may require from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, of the amount of money in the fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates thereof.

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto, the board or the Attorney General may require a retailer, wholesaler, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer

is in compliance with this section, or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto.

(h) To promote compliance with this section, the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of paragraph (2) of subdivision (a) of Section 104557 to make the escrow deposits required in quarterly or other specified installments during the year in which the sales covered by the deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(i) (1) In addition to any other civil or criminal penalty provided by law, upon a finding that a distributor has violated subdivision (e), or paragraph (1) of subdivision (g), the board may take the following actions:

(A) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor pursuant to the procedures applicable to the revocation of a license set forth in Section 30148.

(B) In the case of a second or any subsequent offense, in addition to the action authorized under subparagraph (A), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(i) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(ii) Five thousand dollars (\$5,000).

(2) A distributor in any action for a violation of subdivision (e) shall have a defense provided that either of the following is true:

(A) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list required by subdivision (c).

(B) At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list required by subdivision (c).

(3) The defense described in subparagraph (B) of paragraph (2) is not available to a distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list required by subdivision (c), or the distributor failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail as required by paragraph (4) of

subdivision (c).

(4) A violation of paragraph (3) of subdivision (e) shall constitute a misdemeanor.

(j) If a distributor affixes a stamp or meter impression to a package of cigarettes under subdivision (a) of Section 30163, or pays the tax levied under Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list required by subdivision (c) and the date on which the distributor received notice of the exclusion or removal under paragraph (4) of subdivision (c), then both of the following shall apply:

(1) The distributor shall be entitled to a credit for the tax paid by the distributor with respect to the cigarette or tobacco product to which the stamp or meter impression was affixed, or the tax paid during that period. The distributor shall comply with regulations prescribed by the board regarding refunds and credits that are adopted pursuant to Section 30177.5. If the distributor has sold the cigarette or tobacco product to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor shall provide the credit to the wholesaler or retailer.

(2) The brand family may not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco product to which the stamp or meter impression was affixed, or the tax paid, during that period.

(k) Any tobacco product manufacturer that falsely represents any of the following to any person shall be guilty of a misdemeanor for each false representation:

(1) Any information required under subdivision (b).

(2) That the tobacco product manufacturer is a participating manufacturer.

(3) That the tobacco product manufacturer or any other person has made any or all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, if applicable to the manufacturer.

(4) That it has complied with subdivision (b), or with paragraph (1) of subdivision (g), if applicable to the manufacturer.

(l) A violation of subdivision (e) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

(m) No person shall be issued a distributor's license, pursuant to Section 30140, unless that person has certified in writing that the person will comply fully with this section. Any person who makes a certification pursuant to this subdivision that asserts the truth of



any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(n) For the year 2003, if the effective date of the act that added this section is later than March 16, 2003, the first report of distributors required by paragraph (1) of subdivision (g) shall be due 30 days after that effective date, the certifications by a tobacco product manufacturer described in subdivision (b) shall be due 45 days after that effective date, and the directory described in subdivision (c) shall be published or made available within 90 days after that effective date.

(o) The Attorney General may adopt rules and regulations to implement this section. The rules and regulations may establish procedures for including in the list described in subdivision (c) tobacco product manufacturers that are not participating manufacturers and were not required to make escrow payments under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, for sales made during any preceding calendar year, and brand families of those manufacturers. The rules and regulations may also establish procedures for seizure and destruction of cigarettes forfeited to the state pursuant to Section 30436 or Section 30449, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes. Nothing in this section shall affect the authority of local law enforcement and local government officials to seize and destroy contraband under existing state or local law. The regulations adopted to effect the purposes of this section are emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that chapter, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(p) In any action brought by the state to enforce this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(q) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

## **EXHIBIT 41**

# CALIFORNIA DIRECTORY OF COMPLIANT CIGARETTES AND ROLL-YOUR OWN BRAND FAMILIES LISTED BY MANUFACTURER

LAST UPDATED: MAY 6, 2005

This Directory lists all Tobacco Product Manufacturers and brand families that are certified as being in compliance with California law. Only cigarette brands and roll-your-own (RYO) tobacco products listed in this Directory may be sold, offered for sale or possessed for sale in California.

An asterisk \* means that the manufacturer and its brand family or families are listed in the Directory, pending completion of administrative review by the Attorney General.

Effective immediately, the Attorney General will only update the directory on an as-needed basis to make corrections or to add or delete manufacturers or brand families. Licensed California distributors will be notified by e-mail to the address provided to the Attorney General on the Distributor Registration Form (JUS-TOB8) whenever a manufacturer or brand family is added to or removed from the Directory. If you are a licensed California distributor, you are responsible for checking the most recent update of this Directory and any email notifications from the Attorney General's Office before you stamp cigarettes or pay the tax on RYO tobacco.

Please note that tobacco products commonly known as "little cigars" currently do not have to be listed in this Directory in order to be lawfully sold in California. However, the Attorney General may decide in the future to require that certain brands of little cigars be listed in this Directory.

If you have a question about this Directory, please leave a voicemail message at (916) 565-6486 or send an email to [tobacco@doj.ca.gov](mailto:tobacco@doj.ca.gov).

## RECENT CHANGES TO DIRECTORY

This week's update of the Directory includes a change in listings for National Tobacco Company and RBJ Sales, Inc. Effective immediately, all brand families of RBJ Sales, Inc. are being transferred to National Tobacco Company. Consequently, all brand families previously listed in the Directory as being manufactured by RJB Sales, Inc. are now listed as being manufactured by National Tobacco Company.

### Tobacco Product Manufacturer

### Brand Family

### Date

#### ADDED:

M&R Holdings, Inc.	Farmer's Golden Leaf – RYO	5/6/05
M&R Holdings, Inc.	FG Value Brand – RYO	5/6/05
VCT	Jezebel	5/6/05
VCT	Kudus – RYO	5/6/05
Von Eicken Group	Ashford	5/6/05
Wind River Tobacco Company, LLC	Canoe – RYO	5/6/06

#### REMOVED:

Japan Tobacco	Cabin	5/6/05
	Caster	5/6/05
	Seven Stars	5/6/05
	Export A Select – RYO	5/6/05

<b>REMOVED:</b>		
Kentucky Cut Rag	Mill House – RYO	5/6/05
	People's Pride – RYO	5/6/05
	Southern Gold – RYO	5/6/05
King Maker Marketing	Royale Classic	5/6/05
Kretek International	Liquid Zoo	5/6/05
Monte Paz	Blunt Wrap	5/6/05
	Blunt Wrap – RYO	5/6/05
Liggett Group, Inc.	Perfect Blend	5/6/05
	Ralph's	5/6/05
	Surefine	5/6/05
	Stater Brothers	5/6/05
	Taste of America	5/6/05
Pacific Stanford Manufacturing Corp.	North – RYO	5/6/05
Planta of Berlin	Unitas Excellent – RYO	5/6/05
R.J. Reynolds Tobacco Company	American	5/6/05
	Bee	5/6/05
	Carolina Gold	5/6/05
	Century	5/6/05
	Extra Value	5/6/05
	Goldmark	5/6/05
	Moonlight Tobacco Co.	5/6/05
	Premier	5/6/05
	Raleigh	5/6/05
	Slim Price	5/6/05
	Value & Quality	5/6/05
	Value Sense	5/6/05
SEITA (Societe National d'Exploitation Industrielle des Tabas et Allumettes)	Gitanes	5/6/05
Shermans 1400 Broadway N.Y.C. Ltd.	New Natural	5/6/05
	Phantoms	5/6/05
	Virginia Circles	5/6/05
Tabacalera Honnington	Parker	5/6/05
Union Tobacco & Cigarette Industries	Miami	5/6/05
	Mikado	5/6/05
Von Eicken Group	John Aylesbury Paper Pipes	5/6/05

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Alternative Brands, Inc. (Teapot & Tobacco, Inc.)	Catmandu	USA	NPM
Alternative Brands, Inc. (North Atlantic Cigarette Company)	Zig Zag	USA	NPM
Anderson Tobacco Company, LLC	Savannah	USA	PM
Bailey Tobacco Corporation	American Harvest	USA	NPM
Bailey Tobacco Corporation	Desperado - RYO	USA	NPM
Bailey Tobacco Corporation	Peace - RYO	USA	NPM
Bailey Tobacco Corporation	Revenge	USA	NPM
Bailey Tobacco Corporation	Revenge - RYO	USA	NPM
Bekenton, S.A.	The Brave	USA	PM
Canary Island Cigar Co.	Palace	USA	PM
Canary Islands Cigar Co.	Corona	USA	PM
Canary Islands Cigar Co.	Record	USA	PM
Canary Islands Cigar Co.	VL	USA	PM
Caribbean-American Tobacco Corp.	Freemont	USA	PM
Carolina Tobacco Company	Roger (Listed per order of the Bankruptcy Court)	USA	NPM
Chancellor Tobacco Company, PLC	Treasurer	England	PM
CLP, Inc.	Bridgeton	USA	NPM
CLP, Inc.	DT Tobacco - RYO	USA	NPM
CLP, Inc.	Railroad - RYO	USA	NPM
CLP, Inc.	Smokers Palace - RYO	USA	NPM
CLP, Inc.	Smokers Select - RYO	USA	NPM
CLP, Inc.	Southern Harvest - RYO	USA	NPM
Commonwealth Brands, Inc.	Malibu	USA	PM
Commonwealth Brands, Inc.	Montclair	USA	PM
Commonwealth Brands, Inc.	Natural Blend	USA	PM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Commonwealth Brands, Inc.	Riviera	USA	PM
Commonwealth Brands, Inc.	Sonoma	USA	PM
Commonwealth Brands, Inc.	USA Gold	USA	PM
Cutting Edge Enterprises, Inc.	Emerald	USA	PM
Cutting Edge Enterprises, Inc.	Makro	USA	PM
Daughters & Ryan, Inc.	Athey (Old Timer's)	USA	PM
Daughters & Ryan, Inc.	Cockstrong	USA	PM
Daughters & Ryan, Inc.	Don Giovanni Sigaretta	USA	PM
Daughters & Ryan, Inc.	Don Giovanni Sigaro	USA	PM
Daughters & Ryan, Inc.	G.R. Rimboch**	USA	PM
Daughters & Ryan, Inc.	Penhooker	USA	PM
Daughters & Ryan, Inc.	Ramback	USA	PM
Daughters & Ryan, Inc.	Rowland (Ameriflavor)	USA	PM
Daughters & Ryan, Inc.	Ryback (Dutch Blend)	USA	PM
Daughters & Ryan, Inc.	S.J. Rimboch**	USA	PM
Daughters & Ryan, Inc.	Three Sails	USA	PM
Daughters & Ryan, Inc.	Two Timer	USA	PM
Daughters & Ryan, Inc.	Vengeur	USA	PM
Daughters & Ryan, Inc.	Windsail (American Gold)	USA	PM
Daughters & Ryan, Inc.	Wingate	USA	PM
Daughters & Ryan, Inc.	WinterGold	USA	PM
M/s Dhanraj International	10/20's (ten-twenty's)	USA/India	PM
M/s Dhanraj International	10/20's (ten-twenty's) – RYO	USA/India	PM
M/s Dhanraj International	Castle	USA/India	PM
M/s Dhanraj International	Connect	USA/India	PM
M/s Dhanraj International	Dhyan – Bidis	USA/India	PM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
M/s Dhanraj International	Marks	USA/India	PM
M/s Dhanraj International	Rook	USA/India	PM
M/s Dhanraj International	Zanzibar	USA/India	PM
Eastern Company SAE	Cleopatra	Egypt	PM
Farmer's Tobacco Co. of Cynthiana, Inc.	Kentucky's Best	USA	PM
Farmer's Tobacco Co. of Cynthiana, Inc.	VB Made in the USA	USA	PM
General Tobacco	Bronco	USA	PM
General Tobacco	Champion	USA	PM
General Tobacco	GT One	USA	PM
General Tobacco	Silver	USA	PM
House of Prince A/S	Prince	Denmark	PM
House of Prince A/S	Prince Lights	Denmark	PM
House of Windsor	Wolf Brothers RYO	USA	NPM
International Tobacco Group, Inc.	Golden Eagle	USA	PM
ITL (USA) Limited	du Maurier	Canada	PM
ITL (USA) Limited	Matinee	Canada	PM
Japan Tobacco International USA, Inc. (JTI-MacDonald Corp.)	Export A	USA	PM
Japan Tobacco International USA, Inc.	Mild Seven	USA	PM
Japan Tobacco International USA, Inc.	Wave	USA	PM
Karelia Tobacco Company, Inc.	George Karelias & Sons	Greece	NPM
Karelia Tobacco Company, Inc.	Karelia	Greece	NPM
King Maker Marketing	Ace	USA	PM
King Maker Marketing	Checkers	USA	PM
King Maker Marketing	Checkers - RYO	USA	PM
King Maker Marketing	Gold Crest	USA	PM
King Maker Marketing	Gold Crest - RYO	USA	PM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
King Maker Marketing	Hi-Val	USA	PM
King Maker Marketing	Hi-Val - RYO	USA	PM
King Maker Marketing	Smoker Friendly	USA	PM
Konci G&D Management Group USA, Inc.	Chunghwa	USA	PM
Konci G&D Management Group USA, Inc.	Double Happiness	USA	PM
Konci G&D Management Group USA, Inc.	Golden Deer	USA	PM
Konci G&D Management Group USA, Inc.	Pecny	USA	PM
Kretek International	Dreams	USA	PM
Kretek International	Lookout - RYO	USA	PM
Kretek International	Lush	USA	PM
Kretek International	OM Bidis	USA	PM
Kretek International	Taj Mahal Bidis	USA	PM
Kretek International	White Rhino Bidis	USA	PM
KT&G Corporation	Carnival	Korea	NPM
KT&G Corporation	Esse	Korea	NPM
KT&G Corporation	Mount Class	Korea	NPM
KT&G Corporation	This	Korea	NPM
KT&G Corporation	Time	Korea	NPM
Lane Limited	Cartier Vendome	USA	PM
Lane Limited	Craven "A"	USA	PM
Lane Limited	Dunhill	USA	PM
Lane Limited	Dunhill International	USA	PM
Lane Limited	Golden Virginia	USA	PM
Lane Limited	Jester - RYO	USA	PM
Lane Limited	Midnight Special - RYO	USA	PM
Lane Limited	Oriental #1 - RYO	USA	PM

\*Listed pending completion of administrative review.



<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Lane Limited	Roll Rich - RYO	USA	PM
Lane Limited	RYO Fine Cut - RYO	USA	PM
Lane Limited	Samson (blue) - RYO	USA	PM
Lane Limited	Samson (brown) - RYO	USA	PM
Lane Limited	St. Moritz	USA	PM
Les Tabacs Spokan	American Liberty	Canada	NPM
Liberty Brands, LLC	All Star	USA	PM
Liberty Brands, LLC	Always Save	USA	PM
Liberty Brands, LLC	Best Choice	USA	PM
Liberty Brands, LLC	Cabo Gold	USA	PM
Liberty Brands, LLC	Circle Z	USA	PM
Liberty Brands, LLC	Harper	USA	PM
Liberty Brands, LLC	Knights	USA	PM
Liberty Brands, LLC	Leawood	USA	PM
Liberty Brands, LLC	Liberty	USA	PM
Liberty Brands, LLC	Liberty Gold	USA	PM
Liberty Brands, LLC	Liberty Select	USA	PM
Liberty Brands, LLC	Maxxon	USA	PM
Liberty Brands, LLC	Ropers	USA	PM
Liberty Brands, LLC	Sonic	USA	PM
Liggett Group, Inc.	Brand Marketing	USA	PM
Liggett Group, Inc.	Canyon	USA	PM
Liggett Group, Inc.	Class A	USA	PM
Liggett Group, Inc.	Eagle	USA	PM
Liggett Group, Inc.	Epic	USA	PM
Liggett Group, Inc.	Eve	USA	PM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Liggett Group, Inc.	Grand Prix	USA	PM
Liggett Group, Inc.	Jade	USA	PM
Liggett Group, Inc.	Kingsport	USA	PM
Liggett Group, Inc.	Liggett Select	USA	PM
Liggett Group, Inc.	Meridian	USA	PM
Liggett Group, Inc.	Montego	USA	PM
Liggett Group, Inc.	Pyramid	USA	PM
Liggett Group, Inc.	Quality	USA	PM
Liggett Group, Inc.	Sincerely Yours	USA	PM
Liggett Group, Inc.	Tourney	USA	PM
Liggett Group, Inc.	Yours	USA	PM
Lignum-2, Inc.	Rave	USA	PM
Lignum-2, Inc.	Sampoerna	USA	PM
Lorillard Tobacco Company	Kent	USA	PM
Lorillard Tobacco Company	Maverick	USA	PM
Lorillard Tobacco Company	Max	USA	PM
Lorillard Tobacco Company	Newport	USA	PM
Lorillard Tobacco Company	Old Gold	USA	PM
Lorillard Tobacco Company	Satin	USA	PM
Lorillard Tobacco Company	Triumph	USA	PM
Lorillard Tobacco Company	True	USA	PM
M & R Holdings, Inc.	Basin – RYO	USA	NPM
M & R Holdings, Inc.	Farmer's Gold – RYO	USA	NPM
M & R Holdings, Inc.	Farmer's Golden Leaf – RYO	USA	NPM
M & R Holdings, Inc.	FG Value Brand – RYO	USA	NPM
M & R Holdings, Inc.	Pride – RYO	USA	NPM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
M & R Holdings, Inc.	Zen – RYO	USA	NPM
Mac Baren Tobacco Company	American Blend	USA	PM
Mac Baren Tobacco Company	Halfzware	USA	PM
Mac Baren Tobacco Company A/S	Jason	USA	PM
Mac Baren Tobacco Company A/S	Sportsman	USA	PM
Monte Paz	Jim Porter	USA	PM
Monte Paz	Rumor	USA	PM
Monte Paz	Woodland	USA	PM
National Tobacco Company	#117 - RYO	USA	NPM
National Tobacco Company	Iceberg - RYO	USA	NPM
National Tobacco Company	No. 1 Shredded Regular - RYO	USA	NPM
National Tobacco Company	Number 2 - RYO	USA	NPM
National Tobacco Company	Old Hillside - RYO	USA	NPM
National Tobacco Company	Premium – RYO	USA	NPM
National Tobacco Company	Pure Natural - RYO	USA	NPM
National Tobacco Company	Rivermont - RYO	USA	NPM
National Tobacco Company	Zig Zag – RYO	USA	NPM
People's True Taste	People's True Taste – RYO	USA	NPM
Peter Stokkebye International A/S	Bali	USA	PM
Peter Stokkebye International A/S	House Blend 4	USA	PM
Peter Stokkebye International A/S	Long	USA	PM
Peter Stokkebye International A/S	Master Roll	USA	PM
Peter Stokkebye International A/S	McClintock	USA	PM
Peter Stokkebye International A/S	PS 90 Norwegian Shag - RYO	USA	PM
Peter Stokkebye International A/S	PS 91 Danish Export - RYO	USA	PM
Peter Stokkebye International A/S	PS 93 Amsterdam Shag - RYO	USA	PM

\*Listed pending completion of administrative review.

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Peter Stokkebye International A/S	PS 94 Turkish Export - RYO	USA	PM
Peter Stokkebye International A/S	PS 95 Stockholm Blend - RYO	USA	PM
Peter Stokkebye International A/S	PS 96 London Export- RYO	USA	PM
Philip Morris, USA	All American Value	USA	PM
Philip Morris, USA	Alpine	USA	PM
Philip Morris, USA	Basic	USA	PM
Philip Morris, USA	Benson & Hedges	USA	PM
Philip Morris, USA	Best Buy	USA	PM
Philip Morris, USA	Bristol	USA	PM
Philip Morris, USA	Bronson	USA	PM
Philip Morris, USA	Bucks	USA	PM
Philip Morris, USA	Cambridge	USA	PM
Philip Morris, USA	Canadian Style Players	USA	PM
Philip Morris, USA	Chesterfield	USA	PM
Philip Morris, USA	Collectors Choice	USA	PM
Philip Morris, USA	Commander	USA	PM
Philip Morris, USA	Daves	USA	PM
Philip Morris, USA	English Ovals	USA	PM
Philip Morris, USA	Genco	USA	PM
Philip Morris, USA	Generals	USA	PM
Philip Morris, USA	L&M	USA	PM
Philip Morris, USA	Lark	USA	PM
Philip Morris, USA	Marlboro	USA	PM
Philip Morris, USA	Merit	USA	PM
Philip Morris, USA	Parliament	USA	PM
Philip Morris, USA	Players	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Philip Morris, USA	Premium Buy	USA	PM
Philip Morris, USA	Rothman	USA	PM
Philip Morris, USA	Saratoga	USA	PM
Philip Morris, USA	Virginia Slims	USA	PM
Premier Manufacturing Incorporated	First Class (1 <sup>st</sup> Class)	USA	PM
Premier Manufacturing Incorporated	Shield	USA	PM
Premier Manufacturing Incorporated	Ultra Buy	USA	PM
PT. Djarum	Djarum (all styles including Bali Hai and Splash)	USA	PM
PT. Gudang Garam Tbk.	Gudang Garam Surya	India	NPM
Richland Cigarette Rolling Tobacco	Richland Cigarette Rolling Tobacco – RYO	USA	NPM
R.J. Reynolds Tobacco Company	1st Choice	USA	PM
R.J. Reynolds Tobacco Company	Austin	USA	PM
R.J. Reynolds Tobacco Company	Barclay	USA	PM
R.J. Reynolds Tobacco Company	Bargain Buy	USA	PM
R.J. Reynolds Tobacco Company	Beacon	USA	PM
R.J. Reynolds Tobacco Company	Belair	USA	PM
R.J. Reynolds Tobacco Company	Best Value	USA	PM
R.J. Reynolds Tobacco Company	Bonus Value	USA	PM
R.J. Reynolds Tobacco Company	Brentwood	USA	PM
R.J. Reynolds Tobacco Company	Bugler - RYO	USA	PM
R.J. Reynolds Tobacco Company	Camel	USA	PM
R.J. Reynolds Tobacco Company	Capri	USA	PM
R.J. Reynolds Tobacco Company	Carlton	USA	PM
R.J. Reynolds Tobacco Company	Cavalier	USA	PM
R.J. Reynolds Tobacco Company	Charter	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
R.J. Reynolds Tobacco Company	Cimarron	USA	PM
R.J. Reynolds Tobacco Company	Citation	USA	PM
R.J. Reynolds Tobacco Company	Courier	USA	PM
R.J. Reynolds Tobacco Company	Doral	USA	PM
R.J. Reynolds Tobacco Company	Eclipse	USA	PM
R.J. Reynolds Tobacco Company	Focus	USA	PM
R.J. Reynolds Tobacco Company	Gold Coast	USA	PM
R.J. Reynolds Tobacco Company	GPC	USA	PM
R.J. Reynolds Tobacco Company	Highway	USA	PM
R.J. Reynolds Tobacco Company	Jacks	USA	PM
R.J. Reynolds Tobacco Company	Kamel Red	USA	PM
R.J. Reynolds Tobacco Company	Kite - RYO	USA	PM
R.J. Reynolds Tobacco Company	Kool	USA	PM
R.J. Reynolds Tobacco Company	Legend	USA	PM
R.J. Reynolds Tobacco Company	Lucky Strike	USA	PM
R.J. Reynolds Tobacco Company	Marker	USA	PM
R.J. Reynolds Tobacco Company	Misty	USA	PM
R.J. Reynolds Tobacco Company	Monarch	USA	PM
R.J. Reynolds Tobacco Company	More 100	USA	PM
R.J. Reynolds Tobacco Company	More 120	USA	PM
R.J. Reynolds Tobacco Company	Mustang	USA	PM
R.J. Reynolds Tobacco Company	Now	USA	PM
R.J. Reynolds Tobacco Company	Pall Mall	USA	PM
R.J. Reynolds Tobacco Company	Pilot	USA	PM
R.J. Reynolds Tobacco Company	Private Stock	USA	PM
R.J. Reynolds Tobacco Company	Quality Smokes	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
R.J. Reynolds Tobacco Company	Salem	USA	PM
R.J. Reynolds Tobacco Company	Scotch Buy	USA	PM
R.J. Reynolds Tobacco Company	Sebring	USA	PM
R.J. Reynolds Tobacco Company	Signature	USA	PM
R.J. Reynolds Tobacco Company	Smoke 1	USA	PM
R.J. Reynolds Tobacco Company	State Express (555)	USA	PM
R.J. Reynolds Tobacco Company	Stockton	USA	PM
R.J. Reynolds Tobacco Company	Sundance	USA	PM
R.J. Reynolds Tobacco Company	Tareyton	USA	PM
R.J. Reynolds Tobacco Company	Tempo	USA	PM
R.J. Reynolds Tobacco Company	Tri-Brand	USA	PM
R.J. Reynolds Tobacco Company	Value Pride	USA	PM
R.J. Reynolds Tobacco Company	Vantage	USA	PM
R.J. Reynolds Tobacco Company	Viceroy	USA	PM
R.J. Reynolds Tobacco Company	Winston	USA	PM
R.J. Reynolds Tobacco Company	Worth	USA	PM
Rouseco, Inc.	Golden Harvest - RYO	USA	NPM
Sandia Tobacco Manufacturer, Inc.	Sandia	USA	NPM
Santa Fe Natural Tobacco Company, Inc.	Natural American Spirit	USA	PM
Santa Fe Natural Tobacco Company, Inc.	Natural American Spirit - RYO	USA	PM
SEITA (Societe National d'Exploitation Industrielle des Tabas et Allumettes)	Gauloises	USA	PM
SEITA (Societe National d'Exploitation Industrielle des Tabas et Allumettes)	Gauloises - RYO	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	A Hint of Mint	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Black & Gold	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Cigarettellos	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Sherman 1400 Broadway N.Y.C. Inc.	A Touch of Clove	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Fantasia Lights	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Havana Ovals	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	MCD	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Nat Sherman Classic	USA	PM
Sherman 1400 Broadway N.Y.C. Inc.	Naturals	USA	PM
Sherman 1400 Broadway NYC, Ltd.	New York Cui	USA	PM
Single Stick, Inc.	Native Sun – RYO*	USA	NPM
Single Stick, Inc.	Single Stick*	USA	NPM
Single Stick, Inc.	Single Stick – RYO*	USA	NPM
Single Stick, Inc.	Visions*	USA	NPM
Smokin Joes	Exact	USA	NPM
Smokin Joes	Exact - RYO	USA	NPM
Smokin Joes	Glory	USA	NPM
Smokin Joes	Lewiston	USA	NPM
Smokin Joes	Market	USA	NPM
Smokin Joes	Pure	USA	NPM
Smokin Joes	Smokin Joes	USA	NPM
Smokin Joes	Smokin Joes American - RYO	USA	NPM
Smokin Joes	Smokin Joes Canadian - RYO	USA	NPM
Smokin Joes	Smokin Joes Natural	USA	NPM
Smokin Joes	Smokin Joes Natural - RYO	USA	NPM
Smokin Joes	Smokin Joes Premium	USA	NPM
Soex India Pvt. Ltd.	Soex	India	NPM
Star Tobacco, Inc.	Gsmoke	USA	NPM
Star Tobacco, Inc.	Main Street	USA	NPM

\*Listed pending completion of administrative review.



**CONFIDENTIAL VERSION**

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Star Tobacco, Inc.	Sport	USA	NPM
Star Tobacco, Inc.	Vegas	USA	NPM
Tabacalera Nazionale	Infinity	Paraguay	NPM
Tabacalera Regional	Way*	Paraguay	NPM
Top Tobacco, LP	4Aces - RYO	USA	PM
Top Tobacco, LP	Classic Canadian - RYO	USA	PM
Top Tobacco, LP	CN101 - RYO	USA	PM
Top Tobacco, LP	CP101 - RYO	USA	PM
Top Tobacco, LP	Drum – RYO	USA	PM
Top Tobacco, LP	Gambler – RYO	USA	PM
Top Tobacco, LP	Our Advertiser – RYO	USA	PM
Top Tobacco, LP	Top – RYO	USA	PM
Top Tobacco, LP	Wildfire – RYO	USA	PM
Truth & Liberty Manufacturing	Fresh Choice – RYO*	USA	NPM
VCT	Andron's Passion	Netherlands	NPM
VCT	Arbo – RYO	Netherlands	NPM
VCT	Black Death	Netherlands	NPM
VCT	Black Death – RYO	Netherlands	NPM
VCT	Blow Up – RYO	Netherlands	NPM
VCT	Bull Snit – RYO	Netherlands	NPM
VCT	Chills Americana RYO	Netherlands	NPM
VCT	Collory's	Netherlands	NPM
VCT	Go To Hell	Netherlands	NPM
VCT	Jezebel	Netherlands	NPM
VCT	Kudus – RYO	Netherlands	NPM
VCT	Texas	Netherlands	NPM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
VCT	Texas – RYO	Netherlands	NPM
VCT	Turkish Special	Netherlands	NPM
VCT	Turkish Special – RYO	Netherlands	NPM
VCT	US1	Netherlands	NPM
VCT	Wig Wam – RYO	Netherlands	NPM
Vector Tobacco Inc.	Omni	USA	PM
Vector Tobacco Inc.	Quest	USA	PM
Vector Tobacco Inc.	USA (under authority of Medallion Brands)	USA	PM
VIP Tobacco USA, LTD.	Boundary	USA	PM
Virginia Carolina Corporation, Inc.	Conway Gold	USA	PM
Virginia Carolina Corporation, Inc.	Freeway	USA	PM
Von Eicken Group	Ashford	USA	PM
Von Eicken Group	Bull Brand - RYO	USA	PM
Von Eicken Group	Calume	USA	PM
Von Eicken Group	Charles Fairman - RYO	USA	PM
Von Eicken Group	Charles Fairman Straight Virginia	USA	PM
Von Eicken Group	Dimitrino Botschafter	USA	PM
Von Eicken Group	Dimitrino Shepheards Hotel	USA	PM
Von Eicken Group	Fine Cut Cherry, Chocolate, Menthol	USA	PM
Von Eicken Group	Fine Cut Nos. 1-5 - RYO	USA	PM
Von Eicken Group	Harvest - RYO	USA	PM
Von Eicken Group	Jan Willem - RYO	USA	PM
Von Eicken Group	Manitou	USA	PM
Von Eicken Group	Manitou - RYO	USA	PM
Von Eicken Group	Mynheer - RYO	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

<b>Tobacco Product Manufacturer</b>	<b>Brand Family</b>	<b>Country of Origin</b>	<b>PM/NPM</b>
Von Eicken Group	Pirat - RYO	USA	PM
Von Eicken Group	Rosebud	USA	PM
Von Eicken Group	Springwater	USA	PM
Von Eicken Group	Wild Geese	USA	PM
Wind River Tobacco Company, LLC	American Bison	USA	PM
Wind River Tobacco Company, LLC	American Bison - RYO	USA	PM
Wind River Tobacco Company, LLC	Canec - RYO	USA	PM
Wind River Tobacco Company, LLC	Teton - RYO	USA	PM

\*Listed pending completion of administrative review.

CONFIDENTIAL VERSION

## **EXHIBIT 42**

Select Year: 2011 ▾ Go

## The 2011 Florida Statutes

Title XIV  
TAXATION AND FINANCE

Chapter 210  
TAX ON TOBACCO PRODUCTS

[View Entire Chapter](#)

### 210.04 Construction; exemptions; collection.—

- (1) The amount of taxes advanced and paid to the state aforesaid shall be added to and collected as a part of the sales price of the cigarettes sold or distributed, which amount may be stated separately from the price of the cigarettes on all display signs, sales and delivery slips, bills and statements which advertise or indicate the price of the product.
- (2) The cigarette tax imposed shall be collected only once upon the same package or container of such cigarettes.
- (3) No tax shall be imposed by this part upon cigarettes not within the taxing power of the state under the Commerce Clause of the United States Constitution.
- (4) No tax shall be required to be paid:
  - (a) Upon cigarettes sold at post exchanges, ship service stores, ship stores, slop chests, or base exchanges to members of the Armed Services of the United States when such post exchanges, ship service stores, or base exchanges are operated under regulations of the Army, Navy, or Air Force of the United States on military, naval, or air force reservations in this state or when such ship stores or slop chests are operated under the regulations of the United States Navy on ships of the United States Navy; however, it is unlawful for anyone, including members of the Armed Services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who resells, or offers for resale, tax-exempt cigarettes purchased at post exchanges, ship service stores, ship stores, slop chests, or base exchanges is guilty of a violation of the cigarette tax law, punishable as provided in s. 210.18(1).
  - (b) Upon the sale or gift of cigarettes by charitable organizations to bona fide patients in regularly established government veterans' hospitals in Florida for the personal use or consumption of such patients.
- (5) It shall be presumed that all cigarettes are subject to the tax imposed by this part until the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them.
- (6) The sale of single or loose unpacked cigarettes is prohibited. The division may authorize any person to give away sample packages of cigarettes, each to contain not less than two cigarettes upon which the taxes have been paid.
- (7) Nothing in this part shall be construed to prohibit the sale of cigarettes, upon which the tax has been advanced, through the medium of vending machines where the tax is collected by the said vending machines.
- (8) Except as hereinafter provided, all agents shall be liable for the collection and payment of the tax imposed by this part and shall pay the tax to the division by purchasing, under such regulations as it shall prescribe, adhesive stamps of such design and denominations as it shall prescribe.
- (9) Agents, located within or without the state, shall purchase stamps and affix such stamps in the manner prescribed to packages or containers of cigarettes to be sold, distributed, or given away within the state, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. However, the division may, in its discretion, authorize manufacturers to distribute in the state free sample packages of cigarettes containing not less than 2 or more than 20 cigarettes without affixing any surcharge and tax stamps provided copies of shipping invoices on such cigarettes are furnished, and payment of all surcharges and taxes imposed on such cigarettes by law is made, directly to the division not later than the 10th day of each calendar month. The surcharge and tax on cigarettes in sample packages shall be based on

## CONFIDENTIAL VERSION

a unit in accordance with the surcharges levied under s. 210.011(1) and the taxing provisions of s. 210.02(1).

**History.**—s. 2, ch. 21946, 1943; s. 2, ch. 22645, 1945; s. 3, ch. 24363, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26320, 1949; s. 1, ch. 28227, 1953; s. 1, ch. 57-169; ss. 16, 35, ch. 69-106; s. 11, ch. 72-360; s. 3, ch. 79-11; s. 3, ch. 79-317; s. 111, ch. 81-259; s. 2, ch. 82-85; s. 2, ch. 87-86; s. 4, ch. 2009-79.

Select Year: 2011 ▼ Go

## The 2011 Florida Statutes

Title XIV  
TAXATION AND FINANCE

Chapter 210  
TAX ON TOBACCO PRODUCTS

[View Entire Chapter](#)

### **210.06 Affixation of stamps; presumption.—**

(1) Every dealer within the state shall affix or cause to be affixed to such package or container of such cigarettes such stamps as are required under this section within 10 days after receipt of such products. Dealers outside this state shall affix such stamps before the shipment of cigarettes into this state.

(a) A tax stamp shall be applied to all cigarette packages intended for sale or distribution to consumers subject to the tax imposed under s. 210.02, except as otherwise provided in this part.

(b) No stamp shall be applied to any cigarette package exempt from tax under 26 U.S.C. s. 5704 that is distributed by a manufacturer pursuant to federal regulations.

(c) Dealers may apply stamps only to cigarette packages received directly from a manufacturer or importer of cigarettes, or a distributing agent representing a manufacturer or importer of cigarettes, who possesses a valid and current permit under this part.

(2) Each retail dealer shall open such box, carton or other container of cigarettes prior to exposing for sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp. If unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the dealer from whom said cigarettes were purchased. Upon such notification, the dealer from whom said cigarettes were purchased shall replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed, or immediately affix thereto the proper amount of stamps.

(3) Whenever any cigarettes are found in the place of business of any such retail dealer, or in the possession of any other person without the stamps affixed, the presumption shall be that such cigarettes are kept in violation of the provisions of this law.

(4) Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser. All stamps shall be affixed in the manner prescribed by the division. The state may not impose an additional charge on stamps for printing costs.

(5) Except as provided in s. 210.04(9) or s. 210.09(1), no person, other than a dealer or distributing agent that receives unstamped cigarette packages directly from a cigarette manufacturer or importer in accordance with this section and s. 210.085, shall hold or possess an unstamped cigarette package. Dealers shall be permitted to set aside, without application of stamps, only such part of the dealer's stock that is identified for sale or distribution outside this state. If a dealer maintains stocks of unstamped cigarette packages, such unstamped packages shall be stored separately from stamped product packages. No unstamped cigarette packages shall be transferred by a dealer to another facility of the dealer within this state or to another person within this state.

History.—s. 4, ch. 21946, 1943; s. 4, ch. 22645, 1945; s. 1, ch. 26320, 1949; ss. 16, 35, ch. 69-106; s. 5, ch. 79-11; s. 4, ch. 87-86; s. 1, ch. 89-293; s. 3, ch. 2005-228.

## **EXHIBIT 43**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

N.V. SUMATRA TOBACCO TRADING CO.,	:	
Petitioner,	:	Cancellation No. 92052621 (Consolidated)
v.	:	Reg. No. 2,972,524
AMERICAN CIGARETTE COMPANY INC.	:	
Respondent.	:	

**AFFIDAVIT OF TRACY S. DEMARCO**

Tracy S. DeMarco hereby states and declares as follows:

1. I am an attorney at Fulbright & Jaworski, L.L.P.

**I. Cigarette Excise Taxes in Florida**

2. On October 20, 2011, I submitted a public record request to the Florida Department of Business & Professional Regulation's Division of Alcoholic Beverages and Tobacco. The request, attached hereto as Exhibit 1, asked for all records of tobacco excise taxes filed and/or surcharge stamps issued in the years 2005 and 2006 for the following entities: Falcon of America, Inc., American Cigarette Company, F.T.S. Distributors, and United American Tobacco. Ex. 1. On November 20, 2011, I submitted a second request for the above information with respect to Mary Jane Cigarette Co., Inc.

3. Andy Walker of the Division of Alcoholic Beverages and Tobacco provided me with the following information in response to my requests:

a. None of the entities – including Falcon of America, Inc., F.T.S. Distributors, United American Tobacco, Mary Jane Cigarette Co., Inc., and American Cigarette Company – paid or were assessed tobacco excise taxes in 2005. See Ex. 1, Oct. 21, 2011 Email

Correspondence from A. Walker to T. DeMarco & Attached Spreadsheet; Ex. 2, Oct. 26, 2011  
Email Correspondence from A. Walker to T. DeMarco; Ex. 3, Nov. 30, 2011 Email  
Correspondence from A. Walker to T. DeMarco.

b. American Cigarette Company paid cigarette excise taxes in February through June of 2006 and again in September through November of 2006. *See* Ex. 1, Spreadsheet. Such taxes were assessed in 2006. *See* Ex. 2.

c. Neither Falcon of America, Inc., F.T.S. Distributors, United American Tobacco, nor Mary Jane Cigarette Co., Inc. paid or were assessed cigarette excise taxes in 2006.

4. Mr. Walker obtained the above information from electronic records maintained by the Florida Department of Business & Professional Regulation's Division of Alcoholic Beverages and Tobacco ("the Department"). *See* Ex. 1.

5. Mr. Walker explained that the Department does not maintain paper records for monthly excise tax payments that occurred in 2005 and 2006 as Florida statute only requires that such records be maintained for three (3) years. *See id.*

## **II. Statutory Exhibits to Memorandum**

6. Exhibits 30, 31, 39, 42, 43, and 46 to the Memorandum of Law In Support of Applicant's Motion for Summary Judgment, Canc. No. 92052621 (Consolidated) are current versions of United States, California, and Florida Statutes.

7. The above referenced Memorandum contains citations to the 2004 and 2005 versions of these statutes.

8. I have verified that cited sections from 2004 and 2005 are identical to the same citations in the current versions of each statute.

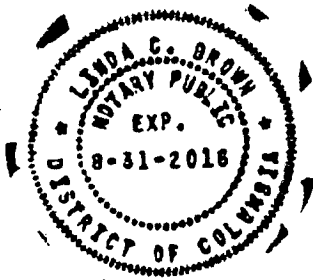
The affiant says nothing more.

Tracy S. DeMarco  
Tracy S. DeMarco

12/1/11  
Date

I, Linda C. Brown, a notary public in the District of Columbia, hereby affirm that Tracy S. DeMarco personally appeared before me and, after providing appropriate identification and being duly sworn, executed the foregoing Affidavit.

Linda C. Brown  
12-1-11  
Date



LINDA C. BROWN  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires August 31, 2016

## **EXHIBIT 1**

**DeMarco, Tracy Stewart**

---

**From:** Walker, Andy [Andy.Walker@dbpr.state.fl.us]  
**Sent:** Friday, October 21, 2011 4:37 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** FW: Cigarette Tax Records  
**Attachments:** 2006 Taxes Paid Records Request.xls

Good afternoon Ms. DeMarco,

Florida Statute requires that we retain records for 3 years, we try and retain them 3-5 years so I am unsure if we still have the paper monthly reports from 2006 in archives. However I was able to find information in our database pertaining to taxes paid. I hope the attached spreadsheet will be useful.

Thanks

---

**From:** publicrecords, abt  
**Sent:** Friday, October 21, 2011 8:24 AM  
**To:** Walker, Andy; Fraher, Marie  
**Subject:** FW: Cigarette Tax Records

---

**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Thursday, October 20, 2011 11:34 AM  
**To:** publicrecords, abt  
**Subject:** Cigarette Tax Records

I'd like to request public records of tobacco excise taxes filed and/or surcharge stamps issued in the year 2006 for the following entities:

1. Falcon of America, Inc.
2. American Cigarette Company
3. F.T.S. Distributors
4. United American Tobacco

Please don't hesitate to contact me if you need further information and/or payment for the requested records.

Best regards,  
Tracy DeMarco

**Tracy S. DeMarco, Associate**  
**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
T: 202 662 4653 • F: 202 662 4643 • [tdemarco@fulbright.com](mailto:tdemarco@fulbright.com) • [www.fulbright.com/tdemarco](http://www.fulbright.com/tdemarco)

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## Taxes Paid in 2006

Business Name	January	February	March	April	May	June	July	August	September
Falcon of America, Inc	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
American Cigarette Company	\$0.00	\$10,026.00	\$10,026.00	\$10,026.00	\$20,052.00	\$20,052.00	\$0.00	\$0.00	\$20,052.00
F.T.S. Distributors	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
United American Tobacco	No distributor found holding a Florida license by this name								

October	November	December
\$0.00	\$0.00	\$0.00
\$ 10,026.00	\$ 10,026.00	\$ 10,026.00
\$0.00	\$0.00	\$0.00

## **EXHIBIT 2**



## DeMarco, Tracy Stewart

---

**From:** Walker, Andy [Andy.Walker@dbpr.state.fl.us]  
**Sent:** Wednesday, October 26, 2011 3:46 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** RE: Cigarette Tax Records

Yes that spreadsheet is for 2006. Those businesses did not pay any taxes in 2005.

---

**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Wednesday, October 26, 2011 10:10 AM  
**To:** Walker, Andy  
**Subject:** RE: Cigarette Tax Records

Hi Andy,

One quick question re the spreadsheet you sent me last week. To make sure I'm reading it right, the numbers reflect taxes that accrued each month in 2006, *not* 2005 – correct? Just wanted to verify given that any income tax paid in 2006 would reflect taxes assessed in 2005.

Also, have you had a chance to see whether you have the tax information from 2005?

Thanks again, so much, for your help.  
Tracy

**Tracy S. DeMarco, Associate**  
**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
T: 202 662 4653 • F: 202 662 4643 • [tdemarco@fulbright.com](mailto:tdemarco@fulbright.com) • [www.fulbright.com/tdemarco](http://www.fulbright.com/tdemarco)

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**From:** Walker, Andy [mailto:Andy.Walker@dbpr.state.fl.us]  
**Sent:** Friday, October 21, 2011 4:59 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** RE: Cigarette Tax Records

Tracy,

I will look into it.

---

**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Friday, October 21, 2011 4:42 PM  
**To:** Walker, Andy  
**Subject:** RE: Cigarette Tax Records

Andy,

Thanks so much for your prompt response. The spreadsheet you provided was very helpful. Is there any chance that you might have that same information for 2005?

Thanks again,

Tracy

**Tracy S. DeMarco, Associate**

**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
T: 202 662 4653 • F: 202 662 4643 • [tdemarco@fulbright.com](mailto:tdemarco@fulbright.com) • [www.fulbright.com/tdemarco](http://www.fulbright.com/tdemarco)

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**From:** Walker, Andy [mailto:Andy.Walker@dbpr.state.fl.us]  
**Sent:** Friday, October 21, 2011 4:37 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** FW: Cigarette Tax Records

Good afternoon Ms. DeMarco,

Florida Statute requires that we retain records for 3 years, we try and retain them 3-5 years so I am unsure if we still have the paper monthly reports from 2006 in archives. However I was able to find information in our database pertaining to taxes paid. I hope the attached spreadsheet will be useful.

Thanks

---

**From:** publicrecords, abt  
**Sent:** Friday, October 21, 2011 8:24 AM  
**To:** Walker, Andy; Fraher, Marie  
**Subject:** FW: Cigarette Tax Records

---

**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Thursday, October 20, 2011 11:34 AM  
**To:** publicrecords, abt  
**Subject:** Cigarette Tax Records

I'd like to request public records of tobacco excise taxes filed and/or surcharge stamps issued in the year 2006 for the following entities:

1. Falcon of America, Inc.
2. American Cigarette Company
3. F.T.S. Distributors
4. United American Tobacco

Please don't hesitate to contact me if you need further information and/or payment for the requested records.

Best regards,  
Tracy DeMarco

**Tracy S. DeMarco, Associate**

**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
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To reply to our email administrator directly, send an email to [postmaster@fulbright.com](mailto:postmaster@fulbright.com).

### **EXHIBIT 3**

**DeMarco, Tracy Stewart**

---

**From:** Walker, Andy [Andy.Walker@dbpr.state.fl.us]  
**Sent:** Wednesday, November 30, 2011 4:51 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** RE: Cigarette Tax Records

Tracy,

We don't show a distributor by that name. Sorry

Thanks

---

**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Wednesday, November 30, 2011 3:33 PM  
**To:** Walker, Andy  
**Subject:** RE: Cigarette Tax Records

Andy,

You helped me find the below information about a month ago. Is there any chance you could pull the same information (tobacco excise taxes paid) for Mary Jane Cigarette Co., Inc. in 2005 and 2006?

Really appreciate all your help.

Thanks,

**Tracy S. DeMarco, Associate**  
**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
T: 202 662 4653 • F: 202 662 4643 • [tdemarco@fulbright.com](mailto:tdemarco@fulbright.com) • [www.fulbright.com/tdemarco](http://www.fulbright.com/tdemarco)

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**From:** Walker, Andy [mailto:Andy.Walker@dbpr.state.fl.us]  
**Sent:** Friday, October 21, 2011 4:37 PM  
**To:** DeMarco, Tracy Stewart  
**Subject:** FW: Cigarette Tax Records

Good afternoon Ms. DeMarco,

Florida Statute requires that we retain records for 3 years, we try and retain them 3-5 years so I am unsure if we still have the paper monthly reports from 2006 in archives. However I was able to find information in our database pertaining to taxes paid. I hope the attached spreadsheet will be useful.

Thanks

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**From:** publicrecords, abt  
**Sent:** Friday, October 21, 2011 8:24 AM  
**To:** Walker, Andy; Fraher, Marie  
**Subject:** FW: Cigarette Tax Records

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**From:** DeMarco, Tracy Stewart [mailto:tdemarco@fulbright.com]  
**Sent:** Thursday, October 20, 2011 11:34 AM  
**To:** publicrecords, abt  
**Subject:** Cigarette Tax Records

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1. Falcon of America, Inc.
2. American Cigarette Company
3. F.T.S. Distributors
4. United American Tobacco

Please don't hesitate to contact me if you need further information and/or payment for the requested records.

Best regards,  
Tracy DeMarco

**Tracy S. DeMarco, Associate**  
**FULBRIGHT & Jaworski L.L.P.** • 801 Pennsylvania Avenue, N.W. • Washington, D.C. 20004-2623  
T: 202 662 4653 • F: 202 662 4643 • [tdemarco@fulbright.com](mailto:tdemarco@fulbright.com) • [www.fulbright.com/tdemarco](http://www.fulbright.com/tdemarco)

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## **EXHIBIT 44**



## Welcome to the online source for the California Code of Regulations

### **18 CA ADC § 4081**

§ 4081. Sample Cigarettes and Tobacco Products.

Term ►

18 CCR § 4081

Cal. Admin. Code tit. 18, § 4081

Barclays Official California Code of Regulations [Currentness](#)

Title 18. Public Revenues

Division 2. State Board of Equalization -Business Taxes

Chapter 9. Cigarette and Tobacco Products Tax Law Regulations

[Article 13.](#) Particular Transactions ([Refs & Annos](#))

⇒ **§ 4081. Sample Cigarettes and Tobacco Products.**

The giving away in this state of untaxed cigarettes or tobacco products as samples is a taxable distribution.

Manufacturers' agents or representatives may for advertising purposes, as permitted by state law and the terms of the November 23, 1998 Master Settlement Agreements with the state which are applicable to the signatories to those Agreements, distribute to consumers packages of cigarettes without stamps or meter impressions affixed to the packages or untaxed tobacco products. However, the manufacturer giving away such sample cigarettes or tobacco products must report the distribution on its monthly report or return and pay the tax due. Each package of such samples shall have imprinted on it: "Not for sale. Applicable state tax has been paid." and each package of sample tobacco products shall be clearly marked as a sample.

Cigarette manufacturers shall notify the board in writing in advance of the sampling, giving information as to the approximate date or dates, location or locations, brand, and method of distribution.

Note: Authority cited: Section 30451, Revenue and Taxation Code. Reference: [Sections 30005, 30005.5, 30008 and 30009, Revenue and Taxation Code.](#)

#### HISTORY

1. Amendment filed 4-14-72; effective thirtieth day thereafter (Register 72, No. 16). For prior history, See Register 68, No. 13.

2. Amendment of section heading, section and new Note filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).

18 CCR § 4081, **← 18 CA ADC § 4081 →**

This database is current through 11/18/11 Register 2011, No. 46

END OF DOCUMENT

◀ Term





## **EXHIBIT 45**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

07 NOV -6 PM 2:44

CLERK JES

FTS DISTRIBUTORS OF CALIFORNIA, a California Corporation,  
AMERICAN AUTOMOTIVE SECURITY PRODUCTS, INC.,  
a Florida Corporation, and HAOLEFIED TRADING, LTD.,  
a British Virgin Islands Company,

Plaintiffs/Counter Defendants,

v.

Case Number: CIV-06-0704 RB/WDS

SANDIA TOBACCO MANUFACTURERS, INC.,  
a New Mexico Corporation,

Defendant/Counter-Claimant.

**FINAL JUDGMENT**

This matter comes before the Court on the Court's Memorandum Opinion and Order filed October 11, 2007 (Doc. 109), and Defendant's/Counter-Claimant's Brief Regarding Damages (Doc. 111) and the attached affidavit submitted therewith. claims. (See Mem. Op. & Ord. (Doc. 109).) The Court is fully advised in the premises, and finds that:

1. Plaintiffs/Counterdefendants FTS Distributors of California, American Automotive Security Products, Inc., and Haolefied Trading, Ltd. each had notice of the counterclaims brought against them by Defendant/Counterclaimant Sandia Tobacco Manufacturers, Inc.

2. The Court has jurisdiction over the subject matter of this action.

3. The Court has personal jurisdiction over all the parties in this action, and venue in this judicial district is proper.

4. All counts of Plaintiffs' Second Amended Complaint for Money Damages, Unjust Enrichment, Injunction and Accounting (Doc. 92) will be dismissed with prejudice.

5. Judgment on Count I (Breach of Contract Against FTS of California), Count II (Breach of the Covenant of Good Faith and Fair Dealing Against FTS of California), and Count III (Unjust Enrichment Against FTS of California) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims (Doc. 95) will be entered in favor of Sandia Tobacco Manufacturers, Inc. and against Plaintiff/Counterdefendant FTS Distributors of California in the amount of \$506,478.15 in compensatory damages and \$1,012,956.30 in punitive damages.

6. Count IV (Conversion Against FTS of California) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims will be dismissed with prejudice.

7. Judgment on Count V (Breach of Contract and Breach of Warranty Against Haolefied Trading, Ltd.) and Count VI (Breach of Covenant of Good Faith and Fair Dealing Against Haolefied Trading, Ltd.) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims will be entered in favor of Sandia Tobacco Manufacturers, Inc. and against Plaintiff/Counterdefendant Haolefied Trading, Ltd. in the amount of \$12,675.78 in compensatory damages and \$25,351.56 in punitive damages.

8. Judgment on Count VII (Civil Conspiracy) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims will be entered in favor of Sandia Tobacco Manufacturers, Inc. and against Plaintiffs/Counterdefendants FTS Distributors of California and American Automotive Security Products, Inc., jointly and severally, in the amount of \$140,365.15 in compensatory damages and \$280,730.30 in punitive damages.

9. Pursuant to NMSA 1978, § 56-8-4(B) (2004), Sandia Tobacco Manufacturers, Inc. will be awarded pre-judgment interest on compensatory damages awarded on Counts I, II, III, V, and VI of its counterclaims at a rate of 10 per cent per annum from September 5, 2006, to the date of entry of this judgment.

10. Pursuant to NMSA 1978, § 56-8-4(B) (2004), Sandia Tobacco Manufacturers, Inc. will be awarded pre-judgment interest on compensatory damages awarded on Count VII of its counterclaims at a rate of 10 per cent per annum from March 22, 2007, to the date of entry of this judgment.

11. Sandia Tobacco Manufacturers, Inc. will be awarded post-judgment interest on all amounts awarded on its counterclaims, beginning on the date of entry of this judgment, at the rate provided in 28 U.S.C. § 1961.

Now, Therefore,

1. All counts of Plaintiffs' Second Amended Complaint for Money Damages, Unjust Enrichment, Injunction and Accounting are hereby dismissed with prejudice.

2. Judgment on Count I (Breach of Contract Against FTS of California), Count II (Breach of the Covenant of Good Faith and Fair Dealing Against FTS of California), and Count III (Unjust Enrichment Against FTS of California) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims is hereby entered in favor of Sandia Tobacco Manufacturers, Inc. and against Plaintiff/Counterdefendant FTS Distributors of California in the amount of \$506,478.15 in compensatory damages and \$1,012,956.30 in punitive damages.

3. Count IV (Conversion Against FTS of California) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims is hereby dismissed with prejudice.

4. Judgment on Count V (Breach of Contract and Breach of Warranty Against Haolefied Trading, Ltd.) and Count VI (Breach of Covenant of Good Faith and Fair Dealing Against Haolefied Trading, Ltd.) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims is hereby entered in favor of Sandia Tobacco Manufacturers, Inc. and against

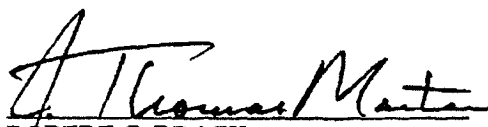
Plaintiff/Counterdefendant Haolefied Trading, Ltd. in the amount of \$12,675.78 in compensatory damages and \$25,351.56 in punitive damages.

5. Judgment on Count VII (Civil Conspiracy) of Sandia Tobacco Manufacturers, Inc.'s Counterclaims is hereby entered in favor of Sandia Tobacco Manufacturers, Inc. and against Plaintiffs/Counterdefendants FTS Distributors of California and American Automotive Security Products, Inc., jointly and severally, in the amount of \$140,365.15 in compensatory damages and \$280,730.30 in punitive damages.

6. Sandia Tobacco Manufacturers, Inc. is hereby awarded pre-judgment interest on compensatory damages awarded on Counts I, II, III, V, and VI of its counterclaims at a rate of 10 per cent per annum from September 5, 2006, to the date of entry of this judgment.

7. Sandia Tobacco Manufacturers, Inc. is hereby awarded pre-judgment interest on compensatory damages awarded on Count VII of its counterclaims at a rate of 10 per cent per annum from March 22, 2007, to the date of entry of this judgment.

8. Sandia Tobacco Manufacturers, Inc. is hereby awarded post-judgment interest on all amounts awarded on its counterclaims, beginning on the date of entry of this judgment, at the rate provided in 28 U.S.C. § 1961.

  
for ROBERT C. BRACK  
UNITED STATES DISTRICT JUDGE  
Date: 11/6/07

Submitted by:

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/ William G. Gilchrist

Jeffrey L. Lowry

Thomas L. Stahl

William G. Gilchrist

Post Office Box 1888

Albuquerque, NM 87103

(505) 765-5900

Attorneys for Sandia Tobacco Manufacturers, Inc.

## **EXHIBIT 46**





## United States Patent and Trademark Office

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## Assignments on the Web &gt; Trademark Query

## Trademark Assignment Abstract of Title

## Total Assignments: 2

Serial #: 78066805

Filing Dt: 06/01/2001

Reg #: 2972594

Reg. Dt: 07/19/2005

Registrant: Maryjane Cigarette Co., Inc.

Mark: UNION

## Assignment: 1

Reel/Frame: 3542/0087

Received: 05/15/2007

Recorded: 05/15/2007

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: MARYJANE CIGARETTE CO., INC.

Exec Dt: 05/15/2007

Entity Type: CORPORATION

Citizenship: FLORIDA

Entity Type: CORPORATION

Citizenship: FLORIDA

Assignee: AMERICAN CIGARETTE COMPANY, INC.

1291-B N.W. 65TH PLACE

FT. LAUDERDALE, FLORIDA 33309

Correspondent: ROBERT C. KAIN, JR.

750 SOUTHEAST THIRD AVENUE

SUITE 100

FT. LAUDERDALE, FL 33316

## Assignment: 2

Reel/Frame: 4665/0479

Received: 11/23/2011

Recorded: 11/23/2011

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: AMERICAN CIGARETTE COMPANY, INC.

Exec Dt: 07/21/2011

Entity Type: CORPORATION

Citizenship: FLORIDA

Entity Type: LIMITED LIABILITY COMPANY

Citizenship: MISSISSIPPI

Assignee: SMOKER'S BEST GROUP, LLC

645 WESTMORELAND DRIVE

TUPELO, MISSISSIPPI 38801

Correspondent: PAUL V. NUNES, ESQ.

300 BAUSCH &amp; LOMB PL

ROCHESTER, NY 14604

Search Results as of: 11/29/2011 01:08 PM  
If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2  
Web interface last modified: July 25, 2011 v.2.2

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## **EXHIBIT 47**

ESTTA Tracking number: **ESTTA224761**

Filing date: **07/17/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	American Cigarette Company, Inc.		
Entity	corporation	Citizenship	Florida
Address	1291-B NORTHWEST 65TH PLACE Fort Lauderdale, FL 33309 UNITED STATES		
Correspondence information	Robert C. Kain, Jr. Kain & Associates, Attorneys at Law, P.A. 750 Southeast Third Avenue Fort Lauderdale, FL 33316 UNITED STATES ekotler@complexip.com, rkain@complexip.com		

**Applicant Information**

Application No	76415303	Publication date	07/15/2008
Opposition Filing Date	07/17/2008	Opposition Period Ends	08/14/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	N.V. SUMATRA TOBACCO TRADING COMPANY Jalan Pattimura No. 3 Pematang Siantar Sumatera Utara, INDONESIA		

**Goods/Services Affected by Opposition**

Class 034. All goods and services in the class are opposed, namely: CIGARETTES, KRETEK CIGARETTES, CIGARS, VIRGINIA TOBACCO, SHAG TOBACCO, CUT OF CLOVES FOR SMOKING, CIGARETTE PAPERS, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL AND MATCHES
---

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2972594	Application Date	06/01/2001
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	UNION		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 cigarettes

Attachments	plead-Not-Opposition-071708.pdf ( 4 pages )(15183 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/rck/
Name	Robert C. Kain, Jr.
Date	07/17/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 76/415,303  
Published for opposition in the Official Gazette of July 15, 2008  
Mark: UNION GOLD

----- )  
AMERICAN CIGARETTE )  
COMPANY INC., )  
Opposer, )  
 )  
v. )  
 )  
N.V. SUMATRA TOBACCO )  
TRADING COMPANY )  
Applicant. )  
----- )

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

American Cigarette Company, Inc., a Florida corporation, having a business address at 1291-B N.W. 65<sup>th</sup> Place, Ft. Lauderdale Florida 33309 ("ACC"), believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant, N.V. Sumatra Tobacco Trading Company ("Sumatra"), seeks to register UNION GOLD as a trademark for use with respect to "Cigarettes, Kretek Cigarettes, Cigars, Virginia Tobacco, Shag Tobacco, Cut of Cloves for Smoking, Cigarette Papers, Cigarette lighters not of precious metal and matches" in Class 34.
2. Sumatra filed for the U.S. trademark on June 7, 2002, relying upon an foreign registration in Indonesia, Reg. No. 320784, dated December 29, 1994.
3. Opposer, ACC is the owner/assignee of the trademark UNION, reg. No. 2,972,594, for "cigarettes" in Class 34.

4. Maryjane Cigarette Company, Inc.(herein "Maryjane") filed the mark, UNION, Serial No. 78/066,805, on June 1, 2001.

5. Maryjane assigned the UNION trademark to ACC on May 15, 2007, and the assignment was recorded in the PTO at reel/frame 3542/0087. All goodwill and trademark rights associated with UNION were transferred to ACC by the recorded assignment.

6. ACC's rights to exclusively use the registered mark UNION on cigarettes relates back to the filing date of the Union trademark application, namely June 1, 2001. (See 15 USC 1057(c)).

7. By virtue of use in commerce of the mark UNION by ACC and its predecessor in the United States, the relevant trade and public have come to associate goods bearing the UNION Mark with ACC.

8. ACC's rights under the Lanham Act, based upon the filing date of its UNION trademark application (June 1, 2001), in connection with goods and services listed therein, predates Sumatra's effective filing date (June 7, 2002).

9. The proposed goods of Sumatra and the goods of ACC are identical and/or substantially similar and related.

10. Sumatra's UNION GOLD Mark, as applied to the goods set forth in the application herein opposed, so resembles ACC's UNION Mark as applied to its goods that it is likely to cause confusion, mistake and/or deception, in the relevant trade and with consumers.

11. If Sumatra is permitted to register the UNION GOLD Mark for the goods set forth in the application, confusion of the trade and public is likely to result, such confusion

resulting in damage and injury to ACC.

12. Purchasers and potential purchasers, on seeing Sumatra's UNION GOLD Mark used in connection with its goods are likely to believe, in error, that such goods are offered in association or affiliation with or under license from ACC.

13. If Sumatra is permitted to register its mark for the goods set forth in the application herein opposed, confusion of the relevant trade and public resulting in damage and injury to ACC would be likely to result. Any persons familiar with the goods of ACC would be likely to assume that Sumatra's goods are sponsored by or produced under license from or otherwise affiliated with ACC. Furthermore, any objection to or fault found with Sumatra's goods provided under its mark would necessarily reflect on and seriously injure the reputation that ACC has established for its goods sold and services offered under its UNION Mark.

14. If Sumatra were granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to ACC.

WHEREFORE, ACC requests that registration of the mark of application No. 76/415,303 be refused and that this opposition be sustained.

Please charge Deposit Account No. 03-1231 for the filing fee of \$300.00 and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-1231 and any overpayment may be credited thereto.

Dated: July 17, 2008

Respectfully submitted,

Fort Lauderdale, Florida

By: Robert Kain/

Robert C. Kain, Jr. (266760)

RKain@ComplexIP.com

Kain & Associates, Attorneys at Law, P.A.

750 Southeast 3<sup>rd</sup> Avenue, Suite 100

Fort Lauderdale, Florida 33316

Telephone: (954) 768-9002

Facsimile: (954) 768-0158

Attorney for Opposer American Cigarette Company, Inc.

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## **EXHIBIT 48**

ESTTA Tracking number: **ESTTA241110**Filing date: **10/07/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	American Cigarette Company, Inc.		
Entity	Corporation	Citizenship	Florida
Address	1291 B Northwest 65th Place Fort Lauderdale, FL 33309 UNITED STATES		
Attorney information	Robert C. Kain, Jr. Kain & Associates, Attorneys at Law, P.A. 750 Southeast Third Avenue Suite 100 Fort Lauderdale, FL 33316 UNITED STATES rkain@complexip.com, dspielman@complexip.com, ekotler@complexip.com		

**Applicant Information**

Application No	76415305	Publication date	09/09/2008
Opposition Filing Date	10/07/2008	Opposition Period Ends	10/09/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	N.V. SUMATRA TOBACCO TRADING COMPANY Jalan Pattimura No. 3 Pematang Siantar Sumatera Utara, INDONESIA		

**Goods/Services Affected by Opposition**

Class 034. All goods and services in the class are opposed, namely: CIGARETTES, KRETEK CIGARETTES, WHITE CIGARETTES, CIGARETTE FILTERS, CIGARS, TOBACCO, RAW TOBACCO, VIRGINIA TOBACCO, CIGARETTE TOBACCO, SNUFF TOBACCO, CHEWING TOBACCO, CUT OF CLOVES FOR SMOKING, CORNHUSK TOBACCO AND SMOKERS' ARTICLES, NAMELY, CIGARETTE PIPES, CIGARETTE PAPERS, TOBACCO POUCHES, PIPES, ASHTRAYS NOT OF PRECIOUS METAL, MATCHES, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL, CIGARETTE CASES AND HOLDERS NOT OF PRECIOUS METAL AND MATCH BOXES AND HOLDERS NOT OF PRECIOUS METAL
--

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2972594	Application Date	06/01/2001
-----------------------	---------	------------------	------------

Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	UNION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2004/02/04 First Use In Commerce: 2004/02/04 cigarettes		

Related Proceedings	Opposition No. 91185261
---------------------	-------------------------

Attachments	plead-Not-Opposition-100708.pdf ( 4 pages )(15448 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/rck/
Name	Robert C. Kain, Jr.
Date	10/07/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 76/415,305  
Published for opposition in the Official Gazette of August 20, 2008  
Mark: U UNION and Design

-----	)	
AMERICAN CIGARETTE	)	
COMPANY INC.,	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
N.V. SUMATRA TOBACCO	)	
TRADING COMPANY	)	
Applicant.	)	
-----	)	

NOTICE OF OPPOSITION

American Cigarette Company, Inc., a Florida corporation, having a business address at 1291-B N.W. 65<sup>th</sup> Place, Ft. Lauderdale Florida 33309 ("ACC"), believes it will be damaged and hereby opposes the registration of said trademark. The grounds for opposition are as follows:

1. Applicant, N.V. Sumatra Tobacco Trading Company ("Sumatra"), seeks to register U UNION and Design as a trademark for use with respect to "Cigarettes, Kretek Cigarettes, White Cigarettes, Cigarette Filters, Cigars, Raw Tobacco, Virginia Tobacco, Cigarette Tobacco, Snuff Tobacco, Chewing Tobacco, Cut of Cloves for Smoking, Cornhusk Tobacco and Smokers' Articles, namely, Cigarette Pipes, Cigarette Papers, Tobacco Pouches, Pipes, Ashtrays not of Precious Metal, Matches Cigarette Lighters not of Precious Metal, Cigarette Cases and Holders not of Precious Metal and Match Boxes and Holders not of Precious Metal" in Class 34.

2. Sumatra filed for the U.S. trademark on June 7, 2002, claiming priority from and relying upon a foreign trademark application filed May 16, 2002, which matured into a registration in Indonesia, Reg. No. 536434, on April 21, 2003.

3. Opposer, ACC is the owner/assignee of the trademark UNION, reg. No. 2,972,594, for "cigarettes" in Class 34.

4. Maryjane Cigarette Company, Inc. (herein "Maryjane") filed a trademark application for the mark, UNION, Serial No. 78/066,805, on June 1, 2001. The application matured into Reg. No. 2,972,594 on July 19, 2005.

5. Maryjane assigned the UNION trademark to ACC on May 15, 2007, and the assignment was recorded in the PTO at reel/frame 3542/0087. All goodwill and trademark rights associated with UNION were transferred to ACC by the recorded assignment.

6. ACC's rights to exclusively use the registered mark UNION on cigarettes relates back to the filing date of the UNION trademark application, namely June 1, 2001. (See 15 USC 1057(c)).

7. By virtue of use in commerce of the mark UNION by ACC and its predecessor in the United States, the relevant trade and public have come to associate goods bearing the UNION Mark with ACC.

8. ACC's rights under the Lanham Act, based upon the filing date of its UNION trademark application (June 1, 2001), in connection with goods and services listed therein, predates Sumatra's effective filing date (May 16, 2002) due to its priority foreign filing date.

9. The proposed goods of Sumatra and the goods of ACC are identical and/or substantially similar and related.

10. Sumatra's U UNION and Design Mark, as applied to the goods set forth in the application herein opposed, so resembles ACC's UNION Mark as applied to its goods that it is likely to cause confusion, mistake and/or deception, in the relevant trade and with consumers.

11. If Sumatra is permitted to register the U UNION and Design Mark for the goods set forth in the application, confusion of the trade and public is likely to result, such confusion resulting in damage and injury to ACC.

12. Purchasers and potential purchasers, on seeing Sumatra's U UNION and Design Mark used in connection with its goods are likely to believe, in error, that such goods are offered in association or affiliation with or under license from ACC.

13. If Sumatra is permitted to register its mark for the goods set forth in the application herein opposed, confusion of the relevant trade and public resulting in damage and injury to ACC would be likely to result. Any persons familiar with the goods of ACC would be likely to assume that Sumatra's goods are sponsored by or produced under license from or otherwise affiliated with ACC. Furthermore, any objection to or fault found with Sumatra's goods provided under its mark would necessarily reflect on and seriously injure the reputation that ACC has established for its goods sold and services offered under its UNION Mark.

14. If Sumatra were granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to ACC.

WHEREFORE, ACC requests that registration of the mark of application No. 76/415,305 be refused and that this opposition be sustained.

Please charge Deposit Account No. 03-1231 for the filing fee of \$300.00 and any additional fees or deficiencies deemed to be due and owing in connection with this opposition may be charged to Deposit Account No. 03-1231 and any overpayment may be credited thereto.

Dated: October 7, 2008

Respectfully submitted,

Fort Lauderdale, Florida

By: /Robert Kain/

Robert C. Kain, Jr. (266760)  
[RKain@ComplexIP.com](mailto:RKain@ComplexIP.com)  
Kain & Associates, Attorneys at Law, P.A.  
750 Southeast 3<sup>rd</sup> Avenue, Suite 100  
Fort Lauderdale, Florida 33316  
Telephone: (954) 768-9002  
Facsimile: (954) 768-0158  
Attorney for Opposer American Cigarette Company, Inc.

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## **EXHIBIT 49**



) this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. However, ACC states that Falcon had the packaging made by Super Color, 3700 N. 29<sup>th</sup> Ave., Hollywood, FL 33020.

(9) All documents and things which reflect, refer to, relate to or evidence a cigarette monthly report detail for UNION cigarettes prior to August 2005.

) RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. Furthermore, ACC does not retain documents more than 5 years old.

(10) All documents and things which reflect, refer to, relate to or concern the termination of the agreement between American Automotive Security Products d/b/a FTS Distributors and Prime Movers produced in connection with the consolidated proceedings as ACC\_000730 thru ACC\_000756, hereafter referred to as "the Prime Movers Agreement."

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the

) possession or control of Respondent. Respondent states further that there was no written termination of the agreement, instead the relationship just ended.

(11) All documents and things which reflect, refer to, relate to or concern ACC's authorization under county, state and local law to manufacture UNION cigarettes during the 2005 time period.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that.

) Furthermore, ACC does not retain documents more than 5 years old.

(12) All documents and things which reflect, refer to, relate to or concern Falcon's authorization under county, state and local law to manufacture UNION cigarettes during the 2004-2005 time period.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that.

) Furthermore, ACC does not retain documents more than 5 years old.

(13) All documents and things which reflect, refer to, relate to or concern the alleged power booster failure at the ACC manufacturing plant in 2005.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. ACC was without power at its facility for eight (8) weeks during 2005 due to Hurricanes Katrina (8/05) and Wilma (10/05). Further, as stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. Additionally, FPL would have those records. Furthermore, ACC does not retain documents more than 5 years old.

(14) All documents and things which reflect, refer to, relate to or concern the alleged late delivery of labeling equipment to the ACC manufacturing plant in 2005.

RESPONSE: Respondent further objects to this Request to the extent it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Subject to the foregoing objections, Respondent states that none are in the possession or control of Respondent. As stated previously, ACC suffered a catastrophic failure of its server in May 2006. As such there are limited or no electronic records prior to that. Furthermore, ACC does not retain documents more than 5 years old.

## **EXHIBIT 50**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

N.V. SUMATRA TOBACCO TRADING CO., :  
Opposer, :  
v. : Cancellation No. 92052621 (consolidated)  
AMERICAN CIGARETTE COMPANY INC. : Registration No.: 2,972,524  
Applicant. :

AFFIDAVIT OF TARA M. VOLD

Tara M. Vold hereby states and declares as follows:

1. I am an attorney at Fulbright & Jaworski, L.L.P.
2. On September 1, 2011, I had a telephone conversation with Respondent's counsel, Darren Spielman of Kain & Associates, regarding Respondent's initial refusal of Petitioner's request for consent to an extension of time of the September 4, 2011 Expert Disclosure deadline in the above-referenced proceeding.
3. During that discussion, Mr. Spielman indicated that one of the reasons his client was inclined not to consent to the request was that his client had provided Petitioner with "everything it had" and that "his client had no more documents relevant to the dispute."

The affiant says nothing more.

Tara M. Vold  
Tara M. Vold  
December 1, 2011  
Date

I, Linda C. Brown, a notary public in the District of Columbia, hereby affirm that Tara M. Vold personally appeared before me and, after providing appropriate identification and being duly sworn, executed the foregoing Affidavit.



Linda C. Brown  
12-1-11

LINDA C. BROWN  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires August 31, 2016

## **EXHIBIT 51**

File Edit View Favorites Tools Help

One gram equals how many ounces

FedEx Rates and Transit Times

## 2. Package and Shipment Details

Package Details: 1 package, .50 lbs, FedEx Box, 1.00 USD.

Help Edit

## 3. Rates and Transit Times

Help

Amounts are shown in USD

Select	Delivery Date/Time	Service	Rates
	Same-day in shortest time possible. Call 1 800 Go FedEx for availability and rate.	FedEx Same Day <sup>2</sup>	
<input type="radio"/>	Tue 11/02/2011 8:30 AM	FedEx First Overnight <sup>2</sup>	104.60
<input type="radio"/>	Tue 11/02/2011 12:00 PM	FedEx Priority Overnight <sup>2</sup>	69.26
<input type="radio"/>	Tue 11/02/2011 4:30 PM	FedEx Standard Overnight <sup>2</sup>	63.56
<input type="radio"/>	Wed 11/02/2011 12:00 PM	FedEx 2Day <sup>2</sup> A.M.	37.15
<input type="radio"/>	Wed 11/02/2011 7:00 PM	FedEx 2Day <sup>2</sup>	32.72

More information about your results:

- If a number is next to a service, it was used to calculate your rate.

5 Currency Converter

Ship

Done

Start

Internet Explorer

Inbox - Microsoft Outlook

RE: Break - Message (HT...)

RE: Break - Message (HT...)

Internet

100%

## **EXHIBIT 52**



## UNITED STATES DISTRICT COURT

## Western District of Washington

UNITED STATES OF AMERICA  
v.

**JAY DAVID SILVERMAN**

## JUDGMENT IN A CRIMINAL CASE

Case Number: 09CR00299JCC-002

USM Number: 39677-086

Howard Ratner  
Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 51

Date of Plea: 04/08/10

   pleaded nolo contendere to count(s)  
which was accepted by the court.

   was found guilty on count(s)  
after a plea of not guilty.

**The defendant is adjudicated guilty of these offenses:**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§2342(a) and 371	Conspiracy to Traffic Contraband Cigarettes	03/01/2008	1
18 U.S.C. § 1956(h)	Conspiracy to Launder Monetary Instruments	05/15/2007	51

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 8-20, 31-45, 52-63 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

M. K. Dimke  
Mary Dimke and Richard Cohen, Assistant United States Attorneys

Nov. 5, 2010  
Date of Imposition of Judgment

Signature of Judge

**The Honorable John C. Coughenour, U.S. District Court**

11/5/10  
Date

09-CR-00299-MAN

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 18 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office. but after Feb 1, 2011

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug and/or alcohol test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit his/her person, residence, office, safety deposit box, storage unit, property, or vehicle to a search, conducted by a U.S. Probation Officer or any other law enforcement officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation; the defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.

Restitution in the amount of \$18,003,341.25 is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall be waived.

The defendant shall provide his or her probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's Federal Income Tax Returns.

The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or obtaining a loan without approval of the defendant's U.S. Probation Officer.

The defendant shall be restricted from any employment without prior approval by the U.S. Probation Officer.

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

### CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200	\$ Waived	\$ 18,003,341.25

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
State of Washington Department of Revenue, Cash Management PO Box 47463 Olympia, WA 98504	18,003,341.25	18,003,341.25	

TOTALS	\$ 18003341.25	\$ 18003341.25
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☒ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☒ The court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

☒ PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: JAY DAVID SILVERMAN  
CASE NUMBER: 09CR00299JCC-002

**ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL**

<b>Case Number Defendant and Co-Defendant Names (including defendant number)</b>	<b><u>Total Amount</u></b>	<b><u>Joint and Several Amount</u></b>	<b><u>Corresponding Payee, if appropriate</u></b>
Edward Goodridge, Sr. CR08-363JLR	\$25,706,331.00	\$13,132,469.00	State of Washington
Linda Goodridge CR08-363JLR	\$25,706,331.00	\$13,132,469.00	State of Washington
Edward Goodridge, Jr. CR08-363JLR	\$25,706,331.00	\$13,132,469.00	State of Washington
Sara Schroedl CR08-363JLR	\$25,706,331.00	\$13,132,469.00	State of Washington
Robert Stuber CR09-44JLR	\$20,664,813.00	\$13,132,469.00	State of Washington
Carol Silverman CR09-299JCC-004	\$18,003,341.25	\$18,003,341.00	State of Washington
Rick Conn CR09-299JCC-001	\$20,445,445.00	\$13,132,469.00	State of Washington
Matthew Cunningham CR09-299JCC-003	\$21,545,678.00	\$18,003,341.25	State of Washington
Henry Gottfriedson CR08-5470BHS	\$9,201,982.00	\$4,870,872.00	State of Washington